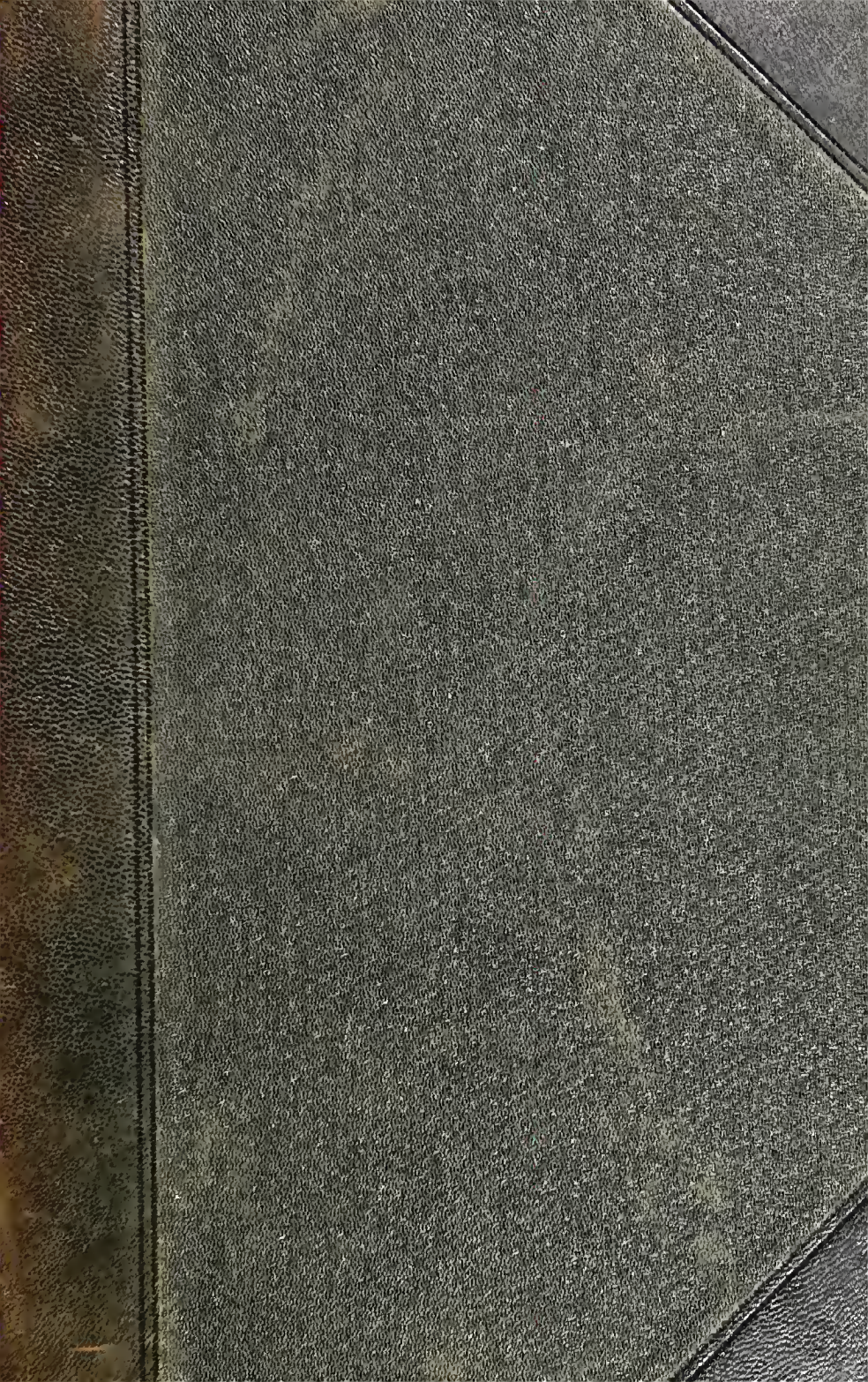
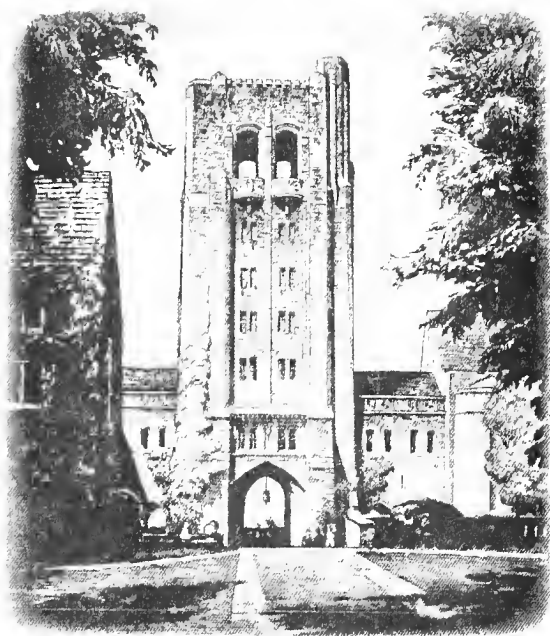
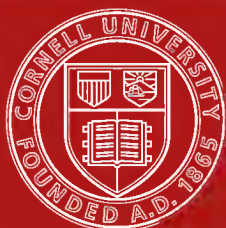






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IMMEDIATE TRANSPORTATION OF MERCHANDISE

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS

OF THE

HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

ON

SUNDRY BILLS BEFORE THE COMMITTEE EXTENDING
THE PRIVILEGE OF IMMEDIATE TRANSPOR-
TATION OF MERCHANDISE TO
CERTAIN PORTS

JANUARY 22, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

COMMITTEE ON WAYS AND MEANS,

HOUSE OF REPRESENTATIVES.

SERENO E. PAYNE, *Chairman.*

JOHN DALZELL.
SAMUEL W. MCCALL.
EBENEZER J. HILL.
HENRY S. BOUTELL.
JAMES E. WATSON.
JAMES C. NEEDHAM.
WILLIAM A. CALDERHEAD.
JOSEPH W. FORDNEY.
JOSEPH H. GAINES.

ROBERT W. BONYNGE.
NICHOLAS LONGWORTH.
CHAMP CLARK.
WILLIAM BOURKE COCKRAN.
OSCAR W. UNDERWOOD.
D. L. D. GRANGER.
JAMES M. GRIGGS.
EDWARD W. POUL.
CHOICE B. RANDELL.

WILLIAM K. PAYNE, *Clerk.*

IMMEDIATE TRANSPORTATION OF MERCHANDISE.

COMMITTEE ON WAYS AND MEANS,
Wednesday, January 22, 1908.

The committee met at 10.30 o'clock a. m., with Hon. Sereno E. Payne in the chair.

Present: The chairman, and Messrs. Dalzell, McCall, Hill, Boutell, Needham, Gaines, Longworth, Clark, Cockran, Underwood, Granger, Griggs, Pou, and Randell.

The CHAIRMAN. The committee will be in order. This meeting was called primarily for the purpose of conducting two or three hearings this morning; one in reference to a number of bills pending before the committee to extend the "I. T." ^a privilege to certain ports. I have asked the Assistant Secretary of the Treasury, Mr. Reynolds, to come before the committee this morning, thinking that the committee ought to have some additional information before it besides the formal letters from the Treasury Department in regard to these ports.

You may proceed, Mr. Reynolds, or do you wish to have questions asked of you?

STATEMENT OF HON. JAMES B. REYNOLDS, ASSISTANT SECRETARY OF THE TREASURY.

Mr. REYNOLDS. Just as you please about that, Mr. Chairman. I understand the question under consideration is the whole question of extending to certain different exterior ports in the United States the privileges of the "I. T." act;^b that is, the privileges accorded in that part of the "I. T." act which would give to those exterior ports the same privileges of examination and appraisement of merchandise as are provided in that part of the act which now permits exterior ports to enjoy the privilege of having merchandise which is landed there go to interior ports without examination at the exterior port of entry. The "I. T." act, you know, makes two classifications. Section 1 gives to the ports of entry, or exterior ports, the privilege of having goods landed there, and, without any examination or appraisement whatever, be shipped in bond to interior ports, where the appraisement is made and the duties are collected.

The CHAIRMAN. That is under section 1?

Mr. REYNOLDS. Yes, sir. That is a privilege that can be extended without any danger to the revenue at all, and it helps toward the expedition of business in many ways.

^a "I. T." i. e., immediate transportation.

^b An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes (Chap. 190, Laws of 1880). For copy of this act see Appendix, p. 6.

The CHAIRMAN. You mean by "exterior ports" those ports on the border?

Mr. REYNOLDS. Yes, sir. Section 7 provides that goods can be shipped in bond from exterior ports to certain other ports and there be examined and the goods appraised and the duties levied and collected. In most of those cases the requests that come in are from very small ports where, as matters stand to-day, there are no proper facilities for the examination of merchandise.

To have merchandise of every character properly examined, it means that there must be a large force of examiners, because no one man or no two or three men could examine all kinds of merchandise with any degree of care or skill. There must be those facilities, which all ports could not have because of the expense, and it is only at large ports that they have the proper facilities for examination. The result is that, in the small ports to which the privileges of examination are extended, it results in one of two things: Either that the examiner, not knowing the nature or character of the goods under examination, is obliged practically to take the invoice value, or else he is compelled to write to the Department and say he does not know enough about these goods to examine them properly, and to request another examiner to come there. The latter, naturally, he is unwilling to do, and in most cases he accepts the valuation of the goods as invoiced, and in such cases the examination of goods is practically a farce.

There are some small ports to which this privilege of immediate transportation and appraisement can be extended without danger, and those are where the goods that come in are of a certain particular kind or character. We could handle those goods very well in those places, and there would be no danger in extending this privilege to those ports. But in small ports where all kinds of goods and merchandise come in for examination, the Department has not the facilities there, nor has it the necessary appropriation with which to provide the facilities.

Mr. NEEDHAM. What would be an illustration or example of a port that receives but one class of goods?

Mr. REYNOLDS. Some ports in Connecticut—one is Bridgeport—where the question of value of goods does not enter into the matter, and where there is no danger of appraisement of merchandise by a man who is not an expert. Then there are many ports where free goods come in, and in those places there would be no danger at all in allowing this privilege, or in ports where the great majority of entries are goods on which ad valorem duties are paid, which are usually of one character, where we could have an expert man on that.

The CHAIRMAN. When you extend the privileges of the seventh section what additional expense does that entail?

Mr. REYNOLDS. It means that we must have examiners. Generally at these small ports there is one appraising officer, and, of course, it is absolutely impossible for one man to pass on all kinds of goods. If this privilege is extended, in order that the revenue may be safeguarded and the tariff law properly carried out, it would be necessary to add several examiners, so that between them all they could take care of all kinds of goods.

The CHAIRMAN. The bills before the committee are, nearly all of them, without exception, to extend the privileges of the seventh sec-

tion, that is, immediate transportation, to these various interior ports; and concerning those that have been referred to the Department we have received letters stating that the Department favors them or has no objection to them. Did you take into consideration the fact of the extra expense in making these interior ports ports of immediate transportation, delivery, and appraisement, and so forth?

Mr. REYNOLDS. I think that the Department has recommended four ports this year, three of them being included in one bill.^a They are in the Bridgeport district, where the goods are of a character that could be passed upon by the officials there. The other case, I think, was at Chattanooga, Tenn.,^b where we already have the necessary facilities.

Mr. CLARK. How do you know they would import those things only at Bridgeport?

Mr. REYNOLDS. Simply by what has been done heretofore.

Mr. CLARK. It has some peculiar trade around there, has it not?

Mr. REYNOLDS. Yes.

The CHAIRMAN. What extra expense would be involved in that?

Mr. REYNOLDS. I do not think that it would mean any extra expense at all.

Mr. HILL. Not any. The character of goods is uniform throughout the year, and almost entirely they are made up of raw materials for manufacturing purposes; pig iron and lumber. It means simply ten days' delay at present.

Mr. REYNOLDS. The trouble we have in examination is when goods are brought in for retail trade; silks, and dry goods, and things of that kind.

The CHAIRMAN. If any gentleman desires to ask any question, he can do so now.

Mr. HILL. Mr. Reynolds, you concur, I think, in the statement I made, that no expense whatever will be involved to the Government by the passage of those bills relating to the Bridgeport district, and that the character of the entries is practically uniform throughout the year, and that no goods or things of that kind would require an examination, but that they are raw materials for manufacturing purposes?

Mr. REYNOLDS. Those are the two considerations that made the Department report favorably on that bill.

Mr. NEEDHAM. You speak of the ports around Bridgeport?

Mr. REYNOLDS. Yes. They are subports; three of them.

The CHAIRMAN. Are those the bills you recommend as not attaching any expense?

Mr. REYNOLDS. We recommend section 7 to be applied to the ports mentioned in the three bills—three to Connecticut, and one to Chattanooga.

The CHAIRMAN. What expense is attached to that?

Mr. REYNOLDS. Under the machinery there, I think there would be no extra expense.

The CHAIRMAN. It would not require extra examiners?

Mr. REYNOLDS. No.

Thereupon the hearing upon this subject was closed.

^a H. R. 9218.

^b H. R. 558.

APPENDIX.

AN ACT to amend the Statutes in relation to immediate transportation of dutiable goods, and for other purposes.

[Laws of 1880—Chapter 190.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when any merchandise, other than explosive articles, and articles in bulk not provided for in section four of this act, imported at the ports of New York, Philadelphia, Boston, Baltimore, Portland and Bath, in Maine, Chicago, Port Huron, Detroit, New Orleans, Norfolk, Charleston, Savannah, Mobile, Galveston, Pensacola, Florida, Cleveland, Toledo, and San Francisco, shall appear by the invoice or bill of lading and manifest of the importing vessel to be consigned to and destined for either of the ports specified in the seventh section of this act, the collector at the port of arrival shall allow the said merchandise to be shipped immediately after the entry prescribed in section two of this act has been made.

Sec. 2. That the collector at the port of first arrival shall retain in his office a permanent record of such merchandise so to be forwarded to the port of destination, and such record shall consist of a copy of the invoice and an entry whereon the duties shall be estimated as closely as possible on the merchandise so shipped, but no oaths shall be required on the said entry. Such merchandise shall not be subject to appraisement and liquidation of duties at the port of first arrival, but shall undergo such examination as the Secretary of the Treasury shall deem necessary to verify the invoice; and the same examination and appraisement thereof shall be required and had at the port of destination as would have been required at the port of first arrival if such merchandise had been entered for consumption or warehouse at such port.

Sec. 3. That such merchandise shall be delivered to and transported by common carriers, to be designated for this purpose by the Secretary of the Treasury, and to and by none others; and such carriers shall be responsible to the United States as common carriers for the safe delivery of such merchandise to the collector at the port of its destination; and before any such carriers shall be permitted to receive and transport any such merchandise, they shall become bound to the United States in bonds of such form and amount, and with such conditions, not inconsistent with law, and such security as the Secretary of the Treasury shall require.

Sec. 4. That sections twenty-eight hundred and fifty-three and twenty-eight hundred and fifty-five of the Revised Statutes of the United States be, and the same are hereby, so amended as to require that all invoices of merchandise imported from any foreign country and intended to be transported without appraisement to any of the ports mentioned in the seventh section of this act, shall be made in quadruplicate; and that the consul, vice-consul, or commercial agent, to whom the same shall be produced, shall certify each of said quadruplicates under his hand and official seal in the manner required by section twenty-eight hundred and fifty-five of the Revised Statutes, and shall then deliver to the person producing the same two of the quadruplicates, one to be used in making entry at the port of first arrival of the merchandise in the United States, and one to be used in making entry at the port of destination, file another in his office, there to be carefully preserved and as soon as practicable transmit the remaining one to the collector or surveyor of the port of final destination of the merchandise: *Provided, however,* That no additional fee shall be collected on account of any service performed under the requirements of this section.

Sec. 5. That merchandise transported under the provisions of this act shall be conveyed in cars, vessels, or vehicles securely fastened with locks or seals, under the exclusive control of the officers of the customs: and merchandise

may also be transported under the provisions of this act by express companies, on passenger trains, in safes and trunks, which shall be of such size, character, and description, and secured in such manner as shall be from time to time prescribed by the Secretary, and in cases where merchandise shall be imported in boxes or packages too large to be included within the safes or trunks so prescribed, such merchandise may be transported, under the provisions of this act, by such express companies, in a separate compartment of the car, secured in such manner as shall from time to time be prescribed by the Secretary of the Treasury; and merchandise such as pig-iron, spiegel-iron, scrap-iron, iron ore, railroad-iron, and similar articles commonly transported upon platform or flat cars, may be transported, under the provisions of this act, upon such platform or flat cars, and the weight of such merchandise so transported shall be ascertained in all cases before shipment, and ordinary railroad-scales may be used for such purpose; and inspectors shall be stationed at proper points along the designated routes, or upon any car, vessel, vehicle, or train at the discretion of the Secretary of the Treasury, and at the expense of the companies, respectively. Such merchandise shall not be unladen or transhipped between the ports of first arrival and final destination, unless authorized by the regulations of the Secretary of the Treasury in cases which may arise from a difference in the gauge of railroads, or from accidents, or from legal intervention, or when by reason of the length of the route the cars, after due inspection by customs officers, shall be considered unsafe or unsuitable to proceed further, or from low water, ice, or other unavoidable obstruction to navigation; and in no case shall there be permitted any breaking of the original packages of such merchandise.

SEC. 6. That merchandise so destined for immediate transportation shall be transferred, under proper supervision, directly from the importing vessel to the car, vessel, or vehicle in which the same is to be transported to its final destination.

SEC. 7. That the privilege of immediate transportation shall extend to the ports of New York and Buffalo, in New York; Burlington, in Vermont; Boston, in Massachusetts; Providence and Newport, in Rhode Island; New Haven, Middletown, and Hartford in Connecticut; Philadelphia and Pittsburgh, in Pennsylvania; Baltimore, Crisfield and Annapolis in Maryland; Wilmington, and Seaford, in Delaware; Salem, Massachusetts; Georgetown in the District of Columbia; Norfolk, Richmond and Petersburg, in Virginia; Wilmington and Newberne, in North Carolina; Charleston and Port Royal, in South Carolina; Savannah and Brunswick, in Georgia; New Orleans, in Louisiana; Portland and Bath, in Maine; Portsmouth, in New Hampshire; Chicago, Cairo, Alton, and Quincy, in Illinois; Detroit, Port Huron, and Grand Haven in Michigan; Saint Louis, Kansas City, and Saint Joseph in Missouri; Saint Paul, in Minnesota; Cincinnati, Cleveland, and Toledo, in Ohio; Milwaukee, and La Crosse, in Wisconsin; Louisville, in Kentucky; San Francisco, San Diego and Wilmington in California; Portland, in Oregon; Memphis, Nashville and Knoxville, in Tennessee; Mobile, in Alabama; and Evansville, in Indiana; and Galveston, Houston, Brownsville, Corpus Christi, and Indianola, in Texas; Omaha, in Nebraska; Dubuque, Burlington and Keokuk, in Iowa; Leavenworth, in Kansas; Tampa Bay, Fernandina, Jacksonville, Cedar Keys, Key West, and Apalachicola, in Florida: *Provided*, That the privilege of transportation herein conferred shall not extend to any place at which there are not the necessary officers for the appraisement of merchandise and the collection of duties.

SEC. 8. That sections twenty-nine hundred and ninety, twenty-nine hundred and ninety-one, twenty-nine hundred and ninety-two, twenty-nine hundred and ninety-three, twenty-nine hundred and ninety-four, twenty-nine hundred and ninety-five, twenty-nine hundred and ninety-six, and twenty-nine hundred and ninety-seven of the Revised Statutes be, and the same are hereby, repealed.

SEC. 9. That no merchandise shall be shipped under the provisions of this act after such merchandise shall have been landed ten days from the importing vessel, and merchandise not entered within such time shall be sent to a bonded warehouse by the collector as unclaimed, and held until regularly entered and appraised.

SEC. 10. That section twenty-nine hundred and eighty-one of the Revised Statutes be amended so as to read as follows: That whenever the proper officer of the customs shall be duly notified in writing of the existence of a lien for freight upon imported goods, wares or merchandise in his custody, he shall,

before delivering such goods, wares, or merchandise to the importer, owner, or consignee thereof, give seasonable notice to the party or parties claiming the lien; and the possession by the officers of customs shall not affect the discharge of such lien, under such regulations as the Secretary of the Treasury may prescribe; and such officer may refuse the delivery of such merchandise from any public or bonded warehouse or other place in which the same shall be deposited, until proof to his satisfaction shall be produced that the freight thereon has been paid or secured; but the rights of the United States shall not be prejudiced thereby, nor shall the United States or its officers be in any manner liable for losses consequent upon such refusal to deliver. If merchandise so subject to a lien regarding which notice has been filed, shall be forfeited to the United States and sold, the freight due thereon shall be paid from the proceeds of such sale in the same manner as other charges and expenses authorized by law to be paid therefrom are paid.

SEC. 11. That this act shall take effect and be in force from and after the first day of July, anno Domini eighteen hundred and eighty.

Approved, June 10, 1880.

REBATE OF CERTAIN COAL DUTIES

HEARINGS

BEFORE THE COMMITTEE ON WAYS AND MEANS
OF THE HOUSE OF REPRESENTATIVES

60TH CONGRESS, 1ST SESSION

ON

H. R. 11325

INTRODUCED BY MR. WEEKS, OF MASSACHUSETTS

JANUARY 22, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS.

HOUSE OF REPRESENTATIVES.

SERENO E. PAYNE, *Chairman*.

JOHN DALZIEL,
SAMUEL W. MCCALL.
EBENEZER J. HILL.
HENRY S. BOUTELL.
JAMES E. WATSON.
JAMES C. NEEDHAM.
WILLIAM A. CALDERHEAD.
JOSEPH W. FORDNEY.
JOSEPH H. GAINES.

ROBERT W. BONYNGE.
NICHOLAS LONGWORTH.
CHAMP CLARK.
WILLIAM BOURKE COCKRAN.
OSCAR W. UNDERWOOD.
D. L. D. GRANGER.
JAMES M. GRIGGS.
EDWARD W. POU.
CHOICE B. RANDELL.

WILLIAM K. PAYNE, *Clerk*.

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REBATE OF CERTAIN COAL DUTIES.

COMMITTEE ON WAYS AND MEANS,
Wednesday, January 22, 1908.

The CHAIRMAN: A hearing is requested on the bill H. R. 11325, introduced by Mr. Weeks of Massachusetts, providing—

That the Secretary of the Treasury be, and he is hereby, authorized and directed to make full rebate of all duties imposed by law on anthracite coal imported into any port of the United States from foreign countries from October sixth, nineteen hundred and two, to January fifteenth, nineteen hundred and three, and to repay all money paid as duties upon anthracite coal at any port of the United States to the person, persons, or corporations who paid the same upon anthracite coal imported from the sixth day of October, nineteen hundred and two, to January fifteenth, nineteen hundred and three: *Provided*, That the person or persons so to be paid shall produce satisfactory proof to the Secretary of the Treasury that they were not reimbursed for said tariffs in the sales to the consumer.

I understand Mr. Hellier is here to speak on that.

Hon. JOHN W. WEEKS, a Representative from Massachusetts: Yes; he will speak on that.

Mr. COCKRAN. What is the object of that bill, Mr. Chairman?

The CHAIRMAN. To refund certain duties paid upon coal brought into certain ports of the United States. We had it up before the committee in the last Congress. It was claimed that at some of the ports they were required to pay duty on coal and that at other ports it was allowed to come in. It would have to pay duty if it was regarded as bituminous coal, but if it was anthracite coal it came in free of duty. It was claimed that there was discrimination between the different ports.

Mr. GRANGER. Is it not the fact, Mr. Chairman, that at certain ports the officers did not enforce the laws of the United States, and at other ports they did? Is not that it?

The CHAIRMAN. We will hear these gentlemen on that subject.

STATEMENT OF HON. JOHN W. WEEKS, A REPRESENTATIVE FROM MASSACHUSETTS.

Mr. WEEKS. Mr. Chairman, argument on this bill, I think, has already been heard by the committee, and last year they decided that they wanted more information. I think the gentlemen of the committee are entitled to have that information. Duties were paid on this coal at Boston and at Baltimore, and were not paid at New York and Philadelphia and other ports. I think that the gentlemen can show that the coal they brought in should not have been dutiable under the law.

MR. COCKRAN. Let me ask you: Was this duty collected on the theory that the coal belonged to a certain class, whereas you claimed that it belonged to another?

MR. WEEKS. There is a question of analysis that comes in, which explains that.

MR. COCKRAN. It is a question of reviewing the analysis made by the customs authorities at these ports?

MR. WEEKS. At two ports the duty was not collected at all. The coal came in free at those ports, but the duty was paid at other ports. The gentlemen who paid this duty claim that the analysis showed that the coal should have come in without duty.

MR. COCKRAN. That is the analysis?

MR. WEEKS. Yes.

MR. McCALL. As I understand, this coal was brought in as duty-free coal, and sold on that basis. It was brought in on the foreign analysis, and subsequently an analysis was made here, and the importers were required to pay duty?

MR. WEEKS. I think that is true.

MR. CLARK. Did these coal merchants mark their coal up and get the price they would have got if the tariff had been collected?

MR. WEEKS. I have not those facts readily in mind at this time, but—

MR. NEEDHAM. Was this duty paid under protest or not at the time?

MR. WEEKS. I think it was.

THE CHAIRMAN. Mr. Hellier knows all about those details. Mr. Weeks probably does not.

MR. WEEKS. I was in possession of them last year, but I am bound to say I am not now. Mr. Hellier, of Boston, and Mr. Dallam, of Baltimore, and Mr. Hamlin, of Boston, are here to represent the dealers who handled this coal, and I will be glad to have them heard. I will ask that you first hear Mr. Hellier.

THE CHAIRMAN. We will hear him.

STATEMENT OF MR. CHARLES E. HELLIER, ATTORNEY FOR THE METROPOLITAN COAL COMPANY, OF BOSTON, MASS.

MR. HELLIER. Mr. Chairman and gentlemen of the committee, this coal was admitted at certain ports of the United States as free coal under a letter of the Secretary of the Treasury, written October 6, 1902, to Hon. N. N. Stranahan, collector of customs in New York City. It was published in the papers and sent to all the collectors. (Reads):

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,

Washington, October 6, 1902.

MY DEAR SIR: Reports indicate that quite a large quantity of coal is being imported. If any portion of this should arrive at the port of New York, the Department desires every facility afforded for its prompt delivery. So far as may be, give consignments of coal the preference over everything else, and solve all reasonable doubts for the present in favor of the coal importer.

Very truly, yours,

L. M. SHAW.

HON. N. N. STRANAHAN,

Collector of Customs, New York City.

Copies of the above were sent to collectors of customs in other ports.

This letter was made public through the press, and immediately considerable importations of anthracite coal from foreign countries were made, as hereinafter set forth, up to the date of January 15, 1903, at which date Congress passed an act removing all duties from anthracite coal. Some of the collectors of customs did not collect any duties from importers of anthracite coal during that period, notably at New York and Philadelphia, while others collected duty on some of such imports and allowed other imports to come in free of duty.

The CHAIRMAN. What is the date of that letter?

Mr. HELLIER. The 6th of October, 1902.

Mr. COCKRAN. What period do you say there?

Mr. HELLIER. Between October 6, 1902, and January 15, 1903, when anthracite was made free by Congress (reads):

Some of the collectors of customs did not collect any duties from importers of anthracite coal during that period, notably at New York and Philadelphia, while others collected duty on some of such imports and allowed other imports to come in free of duty. There was no uniformity of action in this particular among the collectors of customs. At the port of Boston quite an importation of anthracite coal was made without any duty being charged or collected at the time, but a few months afterwards the collector made demand on the importer for the duty on that importation, and on failure to pay it the United States brought an action therefor against the importer, which action is now pending. A summary of the existing conditions is to be found in the following letters written by the Assistant Secretary of the Treasury and by the Assistant Secretary of Commerce.

Mr. NEEDHAM. What are you reading from—an official document?

Mr. HELLIER. This is the report "on the matter, containing information prepared by the Committee on Claims in a prior Congress. I am reading it because the information is more convenient. This is the letter referred to (reads):

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, December 22, 1903.

SIR: Referring to your letter of the 8th instant, with which you inclose S. 1379, for the repayment of duties collected upon anthracite coal from October 6, 1902, to January 15, 1903, and request that you be informed for what reasons such bill should be enacted and as to the amount of money that would be involved by its passage, I have to state that at some of the ports of the United States, after the 6th day of October, 1902, no analysis was made of imported anthracite coal to ascertain whether or not the same was subject to the payment of duty, and it was, consequently, entered free of duty, while at other ports analysis was made and duty collected upon all of such coal containing more than 92 per cent of fixed carbon.

The Committee will recall that under the tariff act coal containing 92 per cent of fixed carbon was admitted free anywhere (reads):

This variance in the practice as to the analysis of such coal at the various ports resulted in some importers being compelled to pay duty upon their importations, while others received theirs duty free, and it is the purpose of the bill to return to the former the duties so collected from them.

As to the amount of money involved by the passage of said act, I am informed by the Secretary of Commerce and Labor that between October 1, 1902, and January 15, 1903, duties amounting to \$82,982 were collected upon 123,853 tons of anthracite coal imported at various ports, that for the reason that the statistics of said Department are kept only by complete quarters, the amount collected from October 6, 1902, can not be segregated, and therefore the amount collected after October 1 is given as above indicated.

Respectfully,

R. B. ARMSTRONG,
Assistant Secretary.

Mr. ARTHUR B. SHELTON,
Clerk Committee on Finance, United States Senate,
Washington, D. C.

Here also is a letter from the Department of Commerce and Labor (reads):

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, February 14, 1905.

SIR: In response to your letter of the 13th instant I have to inform you that according to the returns of collectors of customs the imports of anthracite coal dutiable by reason of containing less than 92 per cent of fixed carbon, at the following ports, during the period from October 1, 1902, to January 15, 1903, were as follows:

	Tons.	Value.	Duty collected.
Boston, Mass.....	50,913.0	\$271,190.00	\$34,111.71
Los Angeles, Cal.....	3,106.996	12,008.00	2,081.69
Memphremagog, Vt.....	14.43	116.00	9.67
New York, N. Y.....	34,599.0	151,956.00	23,181.33
Portland and Falmouth, Me.....	6,634.05	31,482.00	4,444.81
San Francisco, Cal.....	28,549.0	115,098.00	19,127.83

With respect to the imports of dutiable anthracite coal at Baltimore, I can this morning only give you information for the period from July 1, 1902, to January 15, 1903, which is as follows:

Tons	20,985.65
Value	\$117,541.00
Duty collected	\$14,060.30

I have this morning telegraphed to the collector of customs at Baltimore to give me the amount from July 1 to September 30, 1902, which, deducted from the amount just given, would leave a balance covering the period to which you refer.

I also inclose to you herewith a table showing the amount of anthracite coal free of duty imported into the United States, by customs districts, from October 1, 1902, to January 30, 1903. With respect to anthracite coal free of duty entered during the month of January, this information can not readily be given for a portion of a month.

Very truly, yours,

LAWRENCE O. MURRAY,
Assistant Secretary.

HON. JOSEPH V. GRAFF,
House of Representatives, Washington, D. C.

[Inclosure.]

Coal, anthracite (free of duty), imported into the United States from October 1, 1902, to January 30, 1903, by customs districts.

	Tons.	Value.
Aroostook.....	18	\$88
Baltimore.....	17,241	92,011
Boston and Charlestown.....	2,399	6,521
New York.....	78,166	341,063
Philadelphia.....	8,574	36,970
Portland and Falmouth.....	2,860	13,717
Cape Vincent.....	1	3
Detroit.....	30	157
Minnesota.....	3	48
Vermont.....	71	577
Total (4 months).....	109,363	491,155

The following letter is supplemental to the one above quoted:

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, February 14, 1905.

SIR: Referring to my letter to you of to-day in regard to the imports of dutiable anthracite coal, you were informed that the data given you in regard to such imports at Baltimore covered the period from July 1, 1902, to January 15, 1903. I have just received a telegram from the collector of customs at Baltimore stating that there was no dutiable anthracite coal imported at that port from July 1 to September 30, 1902. Therefore the figures given for Baltimore actually cover the imports from October 1, 1902, to January 15, 1903.

Very truly, yours,

LAWRENCE O. MURRAY,
Assistant Secretary.

Hon. JOSEPH V. GRAFF, M. C.,
House of Representatives, Washington, D. C.

It will be remembered that during the period covered by the foregoing letters, the country was suffering intensely by reason of the anthracite coal famine occasioned by the strike then prevailing in the regions where it is mined. Great distress was imminent and much of it was actually experienced, especially in the New England States. Congress was not in session, and therefore the tariff laws, so far as applicable to anthracite coal, could not be amended or repealed, and a strict enforcement of the existing laws on the subject would have increased the rigor of the situation as it then existed. Having all these things in mind, the Secretary of the Treasury issued his letter of instructions, copied at the beginning of this report, and endeavored in that way to give the public some relief. As soon as the public understood that the duty would not be collected, large importations of anthracite coal were made, notably in the Atlantic seaports, and the situation was greatly relieved.

The Secretary of the Treasury and the importers of coal met the emergency as well as they could. Some of the importers were required to pay duty, while others were not required to pay it. To your committee it seems apparent that there should have been absolute equality of treatment and that such equality should be brought about now, as far as possible. The Government can not bring about that equality now by bringing actions against the importers who were not required to pay duty, because such actions would be barred by the statute of limitations.

The Metropolitan Coal Company, for whom I appear, imported three cargoes—

Mr. McCALL. That is in Boston?

Mr. HELLIER. Yes; and paid duties amounting to about \$9,000. Those cargoes, copies of invoices of which I have from the custom-house at Boston to submit to the committee, were brought in on invoices which had attached to them certificates of analysis from the English assayers, showing that under the English system of analyzing coal, the coal contained 92 per cent and a fraction of fixed carbon. In England the practice in estimating the amount of fixed carbon is to include all the fixed carbon in the coal, including that also in the volatile matter. Coal contains a certain amount of solid matter and a certain amount of volatile matter, and the English include the volatile matter in making up the total percentage of carbon. In America it is the universal custom to include only the carbon in solid form; and I think I may state, as the statement is fully justified, that there is no coal anywhere of any kind that contains 92 per cent of fixed carbon in the solid form. Under the consular invoices and the certificate of analysis attached, when the coal reached Boston—and what is true in our case I understand is true in other cases—the coal was passed as free; the entries have a

memorandum on them saying "estimated duty, none;" that is, practically saying that the coal contained 92 per cent of fixed carbon, and it was passed and delivered to the importers as duty free, and sold by them to their customers as duty-free coal. There was no duty included in the price.

Mr. McCALL. The law provided for a duty if the coal did not have 92 per cent of fixed carbon, but above that it was free.

Mr. HELLIER. Yes, sir; and this coal was entered and delivered under the law to the purchasers as free coal. Some four months afterwards—I think in Boston at that time there was perhaps an investigation of the custom-house—but there was a little friction, anyway, between the custom-house in Boston and the Treasury Department in Washington, and it appeared that samples of this coal had been taken from the cargoes by the United States agent, and of course, upon an analysis under the custom here, it appeared that that coal did not contain 92 per cent of fixed carbon in the solid part. The United States analysis I have here, certified copies having been obtained from the custom-house. One cargo, according to that analysis, contained 87 per cent of fixed carbon, another 79 per cent, and another contained 83 per cent. That appearing on the records of the custom-house, the collector felt that it was his duty to levy these duties, and the duties were levied and we paid them, but we paid them under protest.

There is no question about the fact that the coal did not contain under the United States analysis 92 per cent of fixed carbon, and we have no remedy in the courts, because the facts are against us. We can not show that the coal did contain 92 per cent of fixed carbon under the analysis required in the United States.

Mr. NEEDHAM. Did it contain 92 per cent of fixed carbon under your analysis in the foreign country?

Mr. HELLIER. All we have as to that is the certificate attached to the consular invoice, and I assume that it did include the carbon in the volatile matter. We have no reason to doubt the good faith of those people in England. This certificate of analysis is as follows (reads):

Certificate of analysis.

ASSAY OFFICE AND LABORATORY, GLOUCESTER PLACE,

Swansea, November 6, 1902.

DEAR SIR: We herewith hand you our results of the sample of anthracite coal ex s. s. *Matteawan*, received from you the above date.

Fixed carbon, 92.13 per cent.

Yours faithfully,

D. ANDREWS, Esq., *Swansea*.

H. A. PENROSE & Co.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,

Boston, Mass., January 16, 1903.

I certify the foregoing to be a true copy of the original certificate of analysis presented on entry of invoice 3937, Nov. 1902, on file in this office.

[SEAL.]

E. PERRY,
Deputy Collector.

A certificate like that was attached to each consular invoice, and when this appeared at the custom-house, acting under the letter of

the Secretary of the Treasury, this coal was entered and passed as free coal. That happened to about half of what was imported; that is, duties were charged against about half. The other half went in free. It is to equalize that matter and reimburse these gentlemen who have paid these duties, and who are that much out of pocket, that this bill is brought in. Our people not only did not charge the duty to their customers, but they are out of pocket on this coal.

Mr. NEEDHAM. What leads you to suppose that the coal admitted free to these other ports had less than this prescribed percentage of carbon in it?

Mr. HELLIER. I am informed so.

Mr. NEEDHAM. Have you any evidence of it?

Mr. HELLIER. I have only evidence of our case. The customs officials in Boston say that under the regulation they are only permitted to give copies of papers to parties interested, and I have no doubt in each case it was the same.

Mr. UNDERWOOD. Did the Government analyze the coal as it came in?

Mr. HELLIER. No; they took samples, and some months afterwards analyzed those samples.

Mr. UNDERWOOD. What did that analysis show?

Mr. HELLIER. One showed 87 per cent, another 79 per cent, and the third one 83 per cent.

Mr. UNDERWOOD. Does that show that the volatile matter was considered in determining the amount of fixed carbon?

Mr. HELLIER. Yes: that appears from the analysis. The analysis is given as follows (reads):

Chemist's report.

UNITED STATES LABORATORY, APPRAISER'S OFFICE,
Boston, November 19, 1902.

[Analysis of sample of anthracite nuts and peas per steamship *Lord Londonderry*. Marked manifest 2547, invoice 1339; received November, 1902.]

Sample contains—	Per cent.
Moisture -----	2. 14
Volatile matter -----	7. 51
Fixed carbon -----	87. 02
Ash -----	3. 33
Total -----	100. 00

(Signed) W. H. P., *Analyst.*

Approved.

WILLIAM H. PARKER,
Chemist in Charge.

(With No. 1339, Nov., 1902.)

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
Boston, Mass., January 16, 1903.

I certify the foregoing to be a true copy of the original chemist's report on file in this office.

[SEAL.]

E. PERRY,
Deputy Collector.

Chemist's report.

UNITED STATES LABORATORY, APPRAISER'S OFFICE,
Boston, December 5, 1902.

[Analysis of sample of anthracite cobbles per steamship *Matthowan*. Marked manifest 2711; received November, 1902.]

Sample contains—	Per cent.
Moisture -----	1. 89
Volatile matter -----	13. 42
Fixed carbon -----	79. 88
Ash -----	4. 81
Total -----	100. 00

W. H. P., *Analyst.*

Approved.

WILLIAM H. PARKER,
Chemist in Charge.

(On 3937, Nov., 1902.)

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
Boston, Mass., January 16, 1908.

I certify the foregoing to be a true copy of the original chemist's report on file in this office.

[SEAL.]

E. PERRY,
Deputy Collector.

Chemist's report.

UNITED STATES LABORATORY, APPRAISER'S OFFICE,
Boston, November 19, 1902.

[Analysis of sample of anthracite coal per steamship *Bangor*. Marked manifest 2583, invoice 1677; received November, 1902.]

Sample contains—	Per cent.
Moisture -----	1. 55
Volatile matter -----	12. 17
Fixed carbon -----	83. 65
Ash -----	2. 63
Total -----	100. 00

W. H. P., *Analyst.*

Approved.

WILLIAM H. PARKER,
Chemist in Charge.

(With Inv. 1677, Nov., 1902.)

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
Boston, Mass., January 16, 1908.

I certify the foregoing to be a true copy of the original chemist's report on file in this office.

[SEAL.]

E. PERRY,
Deputy Collector.

Now it is a fact that the volatile matter, the gassy matter, contains what are called hydrocarbons—different gases in which carbon is quite a large element. Take that 7 per cent of volatile matter and take the carbon which was in that volatile matter in some form or

other, and add it to the fixed carbon which the American chemist found, and it would undoubtedly come up to 92 per cent.

Mr. UNDERWOOD. I do not remember the statute distinctly, but does it draw a distinction between fixed matter and volatile matter?

Mr. HELLIER. It just says "fixed carbon."

Mr. UNDERWOOD. It is simply a construction of the Department, then, that it must be solid carbon?

Mr. HELLIER. Yes.

Mr. NEEDHAM. There is only a very small deposit of this coal near Swansea, is there not?

Mr. HELLIER. Yes.

Mr. NEEDHAM. Did any of this coal that came to Baltimore or New York come from the same field?

Mr. HELLIER. It is the same field. Most of the coal in England is bituminous. There is only a very small field of anthracite coal in England. Their coal is mostly bituminous.

That is the case, gentlemen. We have all the papers from the custom-house, and the English analysis, and the American analysis, and the consular invoices on which the word "free" appears as the coal was entered at the custom-house.

The CHAIRMAN. This is the same coal on which a suit is pending for the duties now, is it not? A suit was afterwards brought by the Government, was it not? Or is this some coal that was brought through free of duty, on which no suit has been brought?

Mr. HELLIER. In our case we paid the duty and brought suit against the Government to have a part of the duty refunded, on the ground that part of the coal was slack coal, and should pay a different rate of duty from lump coal.

The CHAIRMAN. As I remember it, some of the coal came in free of duty and afterwards the Government brought actions to recover it. Does that apply in the case of your coal?

Mr. HELLIER. No; that is in reference to the coal of the Niver Company, which is represented here by Mr. Dallam, of Baltimore.^a Our coal we paid the duty on. Mr. Hamlin, the president of the Metropolitan Coal Company, is here, and I would like to have him say a few words with reference to the question of whether or not they sold this coal as coal upon which they were to pay a duty.^b

Mr. HILL. They have got to prove that fact to the Secretary of the Treasury before they can get a rebate, have they not?

Mr. HELLIER. I do not know as to that; but the fact is, we sold it as free coal.

Mr. GRANGER. But the statement made by you—was it not substantially that the coal was subject to analysis, just as though I should bring in a diamond or a pearl and say it was of a certain class, and it proved afterwards that I was mistaken, and it belonged to another class?

Mr. HELLIER. We did not make any statement about it. We simply presented the analysis, and under the letter of the Secretary of the Treasury the coal was delivered to us as free coal, and we relied upon its being free coal, and sold it as such.

^a For testimony of Mr. Dallam, see pages 23-26.

^b For testimony of Mr. Hamlin, see pages 19-23.

Mr. GRANGER. But the Treasury relied upon your statement, and afterwards your statement was not substantiated by the analysis?

Mr. HELLIER. Yes: that is quite true, the difference being that they included the carbon only in the solid matter, while the English people include also the carbon in the volatile matter.

Mr. LONGWORTH. You have no evidence to show that the coal imported into New York and other ports did not in fact contain 92 per cent of fixed carbon?

Mr. HELLIER. I would be very glad indeed, if the Committee desired it, and would give me the opportunity, to produce competent experts to show that no coal of any kind contains 92 per cent of fixed carbon in the solid.

Mr. LONGWORTH. According to the American system?

Mr. HELLIER. Yes, sir; if there is any doubt about that in the minds of the committee, I should be very glad to have opportunity to present competent evidence.

The CHAIRMAN. All the evidence that was taken before the Committee when that definition was put in the tariff law was to the effect that that was a true test as between anthracite and other coal, so that naturally there would be doubt in the minds of the members of the committee who were members of the committee at that time.

Mr. GAINES. But does the law say "fixed carbon?"

The CHAIRMAN. Yes, that was the definition put into the law, professing to be the scientific and true definition of anthracite coal.

Mr. HELLIER. Was the purpose of the law to admit anthracite coal duty free?

Mr. CLARK. Here is the duty (reads):

Coal, bituminous, and all coals containing less than 92 percentum of fixed carbon, and shale, 67 cents per ton of 28 bushels, 80 pounds to the bushel; coal slack or culm, such as will pass through a half-inch screen, 15 cents per ton of 28 bushels, 80 pounds to the bushel.^a

Mr. McCALL. Has there ever been any coal discovered, outside of the United States, that would contain 92 per cent of fixed carbon according to the United States tests?

Mr. HELLIER. It is claimed that there is not.

Mr. CLARK. Mr. Dalzell says that there is none in the world outside of Pennsylvania.

Mr. RANDELL. This coal that has 92 per cent of fixed carbon—has that more value or less?

Mr. HELLIER. The higher the percentage the more valuable, if other conditions are right.

Mr. RANDELL. This is sold as coal that would come under the 92 per cent?

Mr. HELLIER. At that time people were selling anything as coal, for that matter. There was a great scarcity of coal at that time.

Mr. NEEDHAM. What do you say is the total amount involved in this bill?

Mr. HELLIER. The total possible amount, provided everybody was able to satisfy the Secretary of the Treasury, is \$82,000.

The CHAIRMAN. If there is nothing further that you have to say, Mr. Hellier, we will be glad to hear the other gentlemen.

^a Dingley Act (Act of July 24, 1897, par. 415).

Mr. HELLIER. Mr. Edward Hamlin, the president of the Metropolitan Coal Company, will speak to you.

The CHAIRMAN. We will hear your statement, Mr. Hamlin.

STATEMENT OF MR. EDWARD HAMLIN, PRESIDENT OF THE METROPOLITAN COAL COMPANY, OF BOSTON, MASS.

Mr. HAMLIN. I was president of the Metropolitan Coal Company at the time of the coal strike. I think the stringency in Boston was perhaps greater than in any other part of the country. In the fall of the year the people were panic-stricken in our part of the country, and our people appointed a fuel committee, with Mr. Henry L. Higginson, and the mayor, at the head of it, and we decided to import some anthracite coal to relieve the situation. We imported some 12,000 tons, or a little over, of anthracite coal. We instructed our agent abroad to get only coal that would show 92 per cent of fixed carbon, with the idea that it would come in free of duty. The first cargo, I think, arrived November 7, and we at once reduced our price of coal to the basis of that coal. We were selling coal nominally in Boston for \$12 a ton; but the morning that that coal arrived we reduced the price of our coal to \$9. That coal cost us, without doubt, between \$7 and \$8 a ton. We assumed that it was similar to our anthracite coal in this country, which yields in handling only about 3 or 5 per cent of dust; but instead of that, we got 35 per cent of dust in one case and in another case 75 per cent of dust, and we lost on those three cargoes about \$20,000, without taking into account the duty, because our anthracite coal in this country, as we figure, yields only from 3 to 5 per cent of waste in dust in dumping and in handling.

Mr. COCKRAN. This duty that you paid was additional to that loss?

Mr. HAMLIN. The duty was no loss at all at the time. We never imagined at the time that it would have to be paid.

Mr. COCKRAN. The duty is in addition to the \$20,000 that you lost on the sale, basing it upon the idea of free admission?

Mr. HAMLIN. Yes, sir; certainly. We had no idea at all there would be any duty assessed on the coal. The Secretary of the Treasury, Mr. Shaw, issued an order which we construed as meaning that no duty would be imposed.

Mr. HAMLIN. This coal was admitted free of duty, and we never suppose we would have to pay duty on that coal. The coal was sold on that basis. Some four months afterwards, I think on March 11, 1903, we had a notice from the custom-house that the duty had to be paid. At that time the stringency and the coal strike had disappeared. We were informed that \$9,000 was payable on that coal, and upon advice of counsel we paid the duty, but filed at the same time, or shortly afterwards, a protest.

Mr. NEEDHAM. Do you know whether they collected these duties at New York and Baltimore?

Mr. HAMLIN. I think not. But I would say that we are more puritanical in Boston. I suppose "the New England conscience" troubled the collector of customs in Boston. In March, four or five months afterwards, I say, we were informed that the coal was "liquidated" and had gone through the custom-house and the duty was to pay.

No coal is produced in the United States to-day that has 92 per cent of fixed carbon in it, to my knowledge. I asked all the leading producing companies—I asked three or four of them on the way down here—and they said that none of their coal would produce more than 85 or 86 per cent of fixed carbon. I saw representatives of the Reading Company and representatives of the Erie people in New York, and they said that a few stray pieces of coal might show better, but that the average coal could not show in this country anywhere—I mean anthracite coal—92 per cent. The coal that we imported showed as much fixed carbon as the average American anthracite coal.

Mr. GAINES. You got all you could for this coal when you sold it?

Mr. HAMLIN. No, sir; we did not. We could have got any price we pleased to ask for that coal. But our company is a very large distributing company in Boston, and I suppose we distribute more than half of the coal in Boston. Our office was visited by mobs—there were simply mobs of people clamoring for coal.

Mr. GAINES. You were not selling coal to them at high prices?

Mr. HAMLIN. All our prices were based upon consultations with the fuel committee, and everything was done with the sanction of the fuel committee, and they knew all the circumstances.

Mr. GRIGGS. Has any coal ever been imported into the United States on this test, free?

Mr. HAMLIN. No, sir; and if the best United States anthracite coal went out of this country, it could never come back free. The average anthracite coal tests about 80 or 85 per cent of fixed carbon, and no more. In other words, this tariff bill prohibited any anthracite coal coming in at all, or else the people who framed it based it on the English method of determining the analysis. This was simply the ordinary way in which everybody in Great Britain analyzes coal. They divide the volatile matter up into oxygen and hydrogen and carbon, and they add those elements to the solid matter.

Mr. COCKRAN. You imported this quantity of coal at a time when the market price was about \$12 a ton?

Mr. HAMLIN. Yes, in Boston.

Mr. COCKRAN. And you sold it at \$9 a ton?

Mr. HAMLIN. We reduced our price to \$9 a ton. The price stood at \$9 a ton for six weeks, or two months after that.

Mr. COCKRAN. Until all that coal was sold?

Mr. HAMLIN. Yes; it was sold in two or three weeks afterwards.

Mr. COCKRAN. You sold it at \$9 a ton when the ruling price was \$12?

Mr. HAMLIN. No; before that it was \$12.

Mr. COCKRAN. But the coming in of this coal broke the price at \$12?

Mr. HAMLIN. Yes; that and the ending of the coal strike, which led people to think they could get coal, which they did not get—

Mr. COCKRAN. The selling of this coal at \$9 a ton entailed a loss to you of \$20,000?

Mr. HAMLIN. Yes; we thought there would be a small profit, but—

Mr. COCKRAN. Suppose the coal had turned out to be as you understood when you imported it and when you made the reduction. It would have left you a profit?

Mr. HAMLIN. Yes; a profit of something like 25 cents a ton.

Mr. COCKRAN. You did not aim to fix the price for a higher profit than that?

Mr. HAMLIN. No, sir.

Mr. McCALL. And that did not include the duty?

Mr. HAMLIN. No.

Mr. COCKRAN. You imported the coal without anticipating the duty, and afterwards the Government stepped in and compelled you to pay duty, although the actual transaction involved a loss to you, outside of that, of \$20,000.

The CHAIRMAN. Can you tell me who Henry A. Penrose & Co. are? The papers seem to say "Gloucester place, Swansea."

Mr. HAMLIN. I do not know whether they are the chemists or what. This analysis came over from our own agent in England at the time that he bought the coal.

The CHAIRMAN. On this invoice here I find:

Certificate of analysis.

ASSAY OFFICE AND LABORATORY, GLOUCESTER PLACE.

Swansea, October 28, 1902.

DEAR SIR: We herewith hand you our analysis of the sample of coal ex steamship *Bangor* received from you the 27th instant.

Fixed carbon 92.1 per cent.

Yours faithfully,

HY. A. PENROSE & Co.

Mr. HAMLIN. I imagine that must be the chemist. I am not familiar with those documents. I have not seen them for some years.

The CHAIRMAN. I was informed before this, though I do not know where I got the information, that some of the coal coming in at other ports was analyzed and the analysis showed over 92 per cent of carbon, according to their analysis; and an explanation was made to the effect that the presence of water in some of the samples of coal prevented its showing so large a percentage of carbon as the other specimens of coal analyzed there in the cases mentioned.

I remember distinctly when the question came up at the passage of the Dingley law with reference to this definition of anthracite coal. The term in the law before that had been that "other coal than anthracite" should pay a duty, anthracite being on the free list; and the question of definition came up, and it was stated to the committee, with evidence that convinced me in favor of the proposed change of definition, that the presence of 92 per cent of fixed carbon was the scientific definition of anthracite coal, and there would not be any chance of mistake of getting it in free of duty. For that reason I was induced to vote for the change of definition. I remember the gentleman who made the statement, and while he is dead now, I may say he was a man of the highest character and scientific attainments and with great information on the question of definitions in the tariff, and so forth.

Mr. HAMLIN. I think, Mr. Chairman, it was simply a question in his mind of carbon and fixed carbon. Ninety-two per cent of carbon alone would be a high rate for any anthracite coal.

The CHAIRMAN. I am only stating that to show the reason for this definition; also that there was no question of doubt in the mind of the Secretary of the Treasury and other officials as to whether anthracite coal did contain more than 92 per cent of fixed carbon. But there seems to be affirmative evidence in the papers presented, and there was affirmative evidence in other custom-houses of the United States that coal had been produced under this definition.

Mr. HAMLIN. The Erie people yesterday gave me an analysis of 4 of their leading collieries. In one the analysis showed the presence of 82 per cent, in another 84 per cent, and in another 88 per cent. Those are the 4 principal collieries of the Pennsylvania Coal Company, which is controlled by the Erie Railroad.

Mr. LONGWORTH. How did you estimate the loss in waste in this coal?

Mr. HAMLIN. By getting out the good coal and finding what was left. We also brought suit against those people in England for sending this coal, and we had a leading expert of the country go to the coal pile and test the different parts of it, and get the different amounts of wastage in the coal. During this same period my company imported some 50,000 tons of bituminous coal, on which we paid some \$30,000 in duty. The only point at issue was in this anthracite coal that we shipped during this same period. We paid some \$30,000 in duties on bituminous coal from England.

Mr. BOUTELL. What was the result of the suit against the collieries in England?

Mr. HAMLIN. They settled the suit. I think they allowed us \$5,500 in paying the bill.

Mr. POT. Taking that into consideration, are you out of pocket anything?

Mr. HAMLIN. We figured we were out \$35,000, and that \$5,500 was taken out of that.

Mr. LONGWORTH. You mean you lost in the waste of the coal?

Mr. HAMLIN. Yes; anthracite, coming in lumps, can only be burned in grates and furnaces in lump form for household purposes, and it was of so friable a nature that it crumbled to dust and it could be sold only at the rate of bituminous coal, and that involved a loss.

Mr. CLARK. The whole question of whether the coal is anthracite or not is a question that is agreed upon by experts, and they agree upon 92 per cent just as they agree upon the grading of wheat. Now, if that last analysis you speak of is true, where these four big collieries ran it up to only 84 and 88 per cent, it seems to me the definition had better be revised.

Mr. HAMLIN. I have talked within a few days with practically all the sales agents of the anthracite coal companies, and they all assured me that they had never heard of any coal that went up to 90 per cent of carbon; never heard of such a thing in this country. And good anthracite is found only in this country and a little bit in England; only in Pennsylvania and England; and all the agents

assured me that they had never heard of 90 per cent of fixed carbon in their coal.

Mr. POU. If you had known, when this coal was brought in, that you would have had to pay a duty, you could have added that much to the price, and saved a loss?

Mr. HAMLIN. Yes; the newspapers were full of it at the time—what we were doing for the people in selling coal at low prices. There is no question about that.

Mr. RANDELL. When the coal strike was settled, the price went down?

Mr. HAMLIN. The coal strike was settled about the 1st of November, but there was a stringency from that time until January or February. We were in serious straits, and there was a great deal of suffering.

The CHAIRMAN. Are there any further questions? Does any other gentleman desire to be heard on this bill?

Mr. HAMLIN. Mr. Dallam, of Baltimore, wishes to be heard.

STATEMENT OF MR. FREDERICK DALLAM, REPRESENTING THE NIVER COAL COMPANY, OF BALTIMORE, MD.

Mr. DALLAM. I have been asked by Mr. Hellier and the Niver Coal Company to say a word about this. The Niver Coal Company has an office in Boston, and sells coal there also. They had a little different transaction from this, but it resulted in substantially the same thing.

First I will give you the history of this bill. It has passed the Finance Committee of the Senate, and has been reported favorably. It has passed the Senate, and has come over to the House. It has gone to the Claims Committee of the House, and then in the Claims Committee of the House an argument was had upon it and statements made about it, and the Claims Committee passed favorably upon it, and gave a favorable report. It is reintroduced here at this session in exactly the same shape as that in which it was passed upon favorably by the Committee of Claims of the House three years ago, and that report of the Committee on Claims is Report No. 4646, Fifty-eighth Congress, third session, which, if any of you gentlemen want to refer to it, you will find that it covers the subject pretty thoroughly.

The transaction of the Niver Coal Company was this: The company had their offices over in Boston, but there was practically no coal there. On that point I might call your attention to Report No. 3916, second session of the Fifty-seventh Congress, from the Committee on Merchant Marine and Fisheries as to the suffering, and so forth, by reason of the scarcity of coal; and in that report, printed by the House, this statement is made (reads):

The oppressively high retail price of coal in Boston and throughout New England, ranging from \$9 to \$15 and \$18 per ton, was universally accounted for by the retail dealers from the fact that they were obliged to pay extraordinary prices to the independent operators for their coal, and in the case of bituminous coal exorbitant prices to the bituminous operators.

From that document you have the conditions before you from your own knowledge and examination. The committee in this case went

over to Boston, as you will find by referring to the report; they went over to Boston and made an investigation of what the conditions were at that time. Now the Niver Coal Company went around to its customers and suggested that "Since we can not furnish you any coal from our mines and regular sources—since we can not get cars from the railroad companies, it is impossible to get the coal moving—and the strike is on, and the prices are very high; we suggest to you that for the purpose of taking care of you we will import some of this Welsh coal, this foreign anthracite coal." We made contracts with those people at low prices, which would simply take care of the Niver Coal Company and take care of the customers, so that when the time came along to deal with their own coal they would have their old customers to deal with.

They made this kind of a contract with their customers, that they would supply the coal at a price that would give a small profit, and that the customers should pay a small addition to the price of the coal, and in addition to the price of the coal, the duty, whatever duty the Niver Coal Company was required to pay. The coal came over. I think they imported between forty and fifty thousand tons, and by a peculiar situation, owing to the wind and weather and various circumstances, about 9 or 10 of the cargoes came in all together. The Niver Coal Company could not get piers to unload their coal at, and they were involved in all kinds of difficulties in handling that coal in the city of Boston; and on account of this letter from the Secretary of the Treasury to the collector of customs, when they came to the custom-house to pass their coal, no samples were taken of it. They were not required to give bond, or go through any formalities of any kind, and they consequently took it for granted that the coal came in free. Nothing was said about duty. The coal was admitted without any unusual formality. They finally got it ashore in Boston and delivered it to their customers; and when they delivered it to their customers they delivered every pound of it under the contract without charging any duty; taking it for granted, of course, that there would be no duty on that coal. About four or five months after that, however, the Government comes around and says that they did not have samples of that coal and that the Niver Coal Company would have to pay duty on that coal, although it had been delivered to the customers free of duty and at the low price without the duty included.

Mr. CLARK. How much are you out in the transaction, or are you out anything?

Mr. DALLAM. We are out \$100,000 in the transaction.

Mr. CLARK. Did they sue you for \$100,000?

Mr. DALLAM. No, sir, if we pay the duty additional, which will be between eight and nine thousand dollars, we would be \$108,000 or \$109,000 out. The reason I go into specialization is the fact that the delay of our vessels and the fact that they came in all together was due partly to the contrary winds and other adverse conditions.

Mr. COCKRAN. Did you sell it at the same rates?

Mr. DALLAM. The market went all to pieces, due to the fact that we already had all we could handle and the piers could not take care of it. A large part of our loss was due to the fact that we had to pay demurrage on the vessels, nine or ten vessels in the harbor at the same time, so that we could not get the coal out.

Mr. CLARK. Has the Government got that money from you yet—the tariff?

Mr. DALLAM. No, sir; we have not paid it.

Mr. CLARK. How much does that amount to—the tariff?

Mr. DALLAM. About \$9,000.

Mr. CLARK. That is what you want to be relieved of?

Mr. DALLAM. Yes, sir; I understand they did not want to try the suit against us because it would be an unfair proposition under those conditions, we having delivered the coal in that way; and I do not think they are pressing the suit against us very hard.

Mr. CLARK. If Congress passed a law to pay you the money and the courts did not make you pay the Treasury, then you would be ahead?

Mr. DALLAM. No, it says, "refund" or "rebate." Ours would come under the "rebate." It would only be under the condition that we were able to show satisfactorily to the Treasury Department that we did not collect that duty from our customers in selling the coal.

Mr. COCKRAN. Since the consumers had been given by you the benefit of this reduction or abolition of duty, you claim that you should not be made to make good at your own expense what you did not collect from your customers?

Mr. DALLAM. Yes.

Mr. LONGWORTH. But did you not contract with the customers by providing that they would pay the duty, if duty were collected?

Mr. DALLAM. Yes; but recovery on that is barred by limitations by State statute. A large part of our dealing was with the retail trade, not the wholesale trade. Our company conducted a retail business in Boston as well as a wholesale trade. These contracts were largely made with poor people—not necessarily with people in the very depths of poverty, but with retail people, and it would now be impossible to collect from them.

Mr. CLARK. Did you collect any part of that under that contract which Mr. Longworth asked about?

Mr. DALLAM. Not one dollar.

Mr. LONGWORTH. These bills were paid, then, by your customers under the impression that there would be no additional payment?

Mr. DALLAM. Yes; we estimated that the coal, having been let in without any formality or requirement to give a bond, under the statement contained in the letter, which was explained to us by the custom-house officers—we thought we were not going to have any duty to pay, and when we rendered bills to our customers we did not include any charge for duty.

Mr. GRANGER. But your contract with them was that they would have to pay in case you paid the duty?

Mr. DALLAM. Yes, sir.

Mr. LONGWORTH. But that would obtain only up to the time fixed by the statute of limitations running against you, and no longer?

Mr. DALLAM. Yes; we always felt that in the long run we would have to pay. The consumer ordinarily would have to pay if you could get back to him.

Mr. GRANGER. The consumer always has to pay, does he not?

Mr. POU. The rebate could only be returned to him provided he showed he was not reimbursed.

Mr. DALLAM. Yes.

Mr. COCKRAN. Did your cargoes come in at the time Mr. Hamlin describes?

Mr. DALLAM. I think ours came in later.

Mr. COCKRAN. What was the time?

Mr. DALLAM. Probably a month apart.

Mr. COCKRAN. So that the arrival of these cargoes probably co-operated with the arrival of the cargoes that Mr. Hamlin describes, so as to break the price?

Mr. DALLAM. Yes; if you will examine the report of the Committee on Merchant Marine and Fisheries of the House you will find there that the price ran from \$9 to \$15 and \$18 or \$20. You could get \$25 a ton in Boston. When this coal came in, the price went down to \$8 or \$9 a ton. The letters of the Treasury Department, or rather of the Department of Commerce and Labor, show that the amount of coal upon which duty was paid was valued at \$571,850, and that the coal which came in free of duty—you will find this in the report of the Committee on Claims—was valued at \$491,155, so that practically one-half of this anthracite coal came in free and one-half had duty paid upon it. These figures are from letters from the Department of Commerce and Labor.

Mr. GAINES. What I can not understand is this, if you had been charged this duty by the local officer: I understand that one local officer could have applied the law one way, and a different officer in another locality could have applied it in another way; but you did not pay these duties until an analysis was made at some central place, so that the analyses that came from other places must have satisfied the requirements of the law, while your analysis failed to satisfy the law.

Mr. DALLAM. I think the analyses were made at different points. For instance, for Baltimore the analysis was made at Baltimore, and for Boston it was made at Boston, and for New York it was made in New York.

Mr. COCKRAN. The office was in New York, and at the other places no examination was made at all. Subsequently, in the course of a row or dispute or discussion between the administration of the port and some critics, the officers in these two ports caused an analysis of some samples which they had retained to be made, and they found the percentage of carbon too low for the standard fixed at that time, and thereupon they instituted suits to recover.

Mr. LONGWORTH. Did all this coal come from the same field?

Mr. DALLAM. Not from the same mine, but from the same field; what we call a mining district here.

Mr. LONGWORTH. Was it all shipped from Swansea?

Mr. DALLAM. Yes, sir.

Thereupon the hearing was closed.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, January 23, 1904.

HON. NELSON W. ALDRICH,
Chairman Committee on Finance, U. S. Senate,
Washington, D. C.

SIR: In reply to request from your committee under date of the 20th instant, I give you the following data showing imports of anthracite coal into the United

States, by customs districts, from October 1, 1902, to January 15, 1903, with amounts of duty collected:

	Quantity.	Value.	Duty collected.
	<i>Tons.</i>		
Baltimore, Md.-----	18.65	\$73	\$12.50
Boston, Mass.-----	50,913.	271,196	34,111.71
Memphremagog, Vt.-----	14.43	116	9.67
New York, N. Y.-----	34,599.	151,956	23,181.33
Portland and Falmouth, Me.-----	6,634.05	31,482	4,444.81
San Diego, Cal.-----	3,106.996	12,008	2,081.69
San Francisco, Cal.-----	28,549.	115,008	19,127.83
Vermont, Vt.-----	18.051	135	12.09
Total-----	123,853.177	582,058	82,981.63

NOTE.—The statement of coal above includes only dutiable anthracite coal during the period named. The imports of free anthracite coal into the port of Baltimore during the period indicated were 20,936 tons, valued at \$117,468.

Very respectfully,

GEORGE B. CORTELYOU,
Secretary.

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TRANSPORTATION OF MONEYS BY EXPRESS .

HEARINGS

BEFORE THE COMMITTEE ON WAYS AND MEANS
OF THE HOUSE OF REPRESENTATIVES

60TH CONGRESS, 1ST SESSION

ON

HOUSE RESOLUTIONS 99 AND 100

INTRODUCED BY MR. GAINES, OF TENNESSEE

JANUARY 24, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

COMMITTEE ON WAYS AND MEANS,

HOUSE OF REPRESENTATIVES.

SERENO E. PAYNE, *Chairman*.

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SAMUEL W. McCALL.
EBENEZER J. HILL.
HENRY S. BOUTELL.
JAMES E. WATSON.
JAMES C. NEEDHAM.
WILLIAM A. CALDERHEAD.
JOSEPH W. FORDNEY.
JOSEPH H. GAINES.

ROBERT W. BONYNGE.
NICHOLAS LONGWORTH.
CHAMP CLARK.
WILLIAM BOURKE COCKRAN.
OSCAR W. UNDERWOOD.
D. L. D. GRANGER.
JAMES M. GRIGGS.
EDWARD W. POU.
CHOICE B. RANDELL.

WILLIAM K. PAYNE, *Clerk*.

TRANSPORTATION OF MONEYS BY EXPRESS.

COMMITTEE ON WAYS AND MEANS,
Friday, January 24, 1908.

The committee met at 10.30 o'clock a. m., with Hon. Sereno E. Payne in the chair.

Present: The Chairman, and Messrs. Dalzell, Boutell, Needham, Fordney, Gaines, Bonyng, Longworth, Clark, Granger, Pou, and Randell.

STATEMENT OF HON. JOHN WESLEY GAINES, A REPRESENTATIVE FROM THE STATE OF TENNESSEE.

Mr. GAINES, of Tennessee. Mr. Chairman and gentlemen of the committee, I assume that the committee is familiar with the resolutions which I have introduced. (H. Res. Nos. 99 and 100.^a) And I want to say that these resolutions are based upon public welfare, Mr. Chairman, in this: That the Government of the United States is compelled, as a Government, to transport its moneys, bonds, and securities all over the United States, not only between the subtreasuries of the United States, but to its various depositories throughout the country, to pay our Army, our Navy, and our indebtedness of all kinds everywhere; indeed, it has to send a great deal to the insular possessions, such, of course, being sent by marine service. But we are not using the mail service at all, or very little, and it can be used.

The national banks—and I know with regard to my own State, for the bankers there have informed me—send money around my State, and possibly elsewhere—I think more probably elsewhere—and send it in part by mail, insuring it in order to avoid the heavy express charges.

Now, my information is—and I am seeking information in regard to this question, too—that we have now, in the present deficiency bill, a deficiency of \$26,555.86, as is shown by the morning Record. I was unable to hear Mr. Tawney's speech of yesterday,^b but I interrogated him about it yesterday evening. Mr. Daskam says that this contract is forty years old.

The CHAIRMAN. Forty years old, do you say?

Mr. GAINES, of Tennessee. Yes; we have the same contract now, the same charges now, that we paid the express company forty years ago, when there was a mere pittance shipped by express as compared with what is shipped now. That we know—that every member of the committee knows.

The CHAIRMAN. But the principal question before this committee is whether the information that is being sought is not already in possession of Congress and in public print.

^a For these resolutions see page 36-37.

^b For this speech, see Congressional Record, first session Sixtieth Congress, pages 1070-1075.

Mr. GAINES, of Tennessee. I can say that it is not.

The CHAIRMAN. I think all of it is, excepting a literal copy of the contract with the companies on which these securities are shipped. It has been taken up several times by a committee of the House, and I think all the information is printed in hearings. I am sure that both the Appropriations Committee and the Committee on Banking and Currency have considered this matter.

Mr. GAINES, of Tennessee. You will find that the resolutions go deeply into the subject and call for the information as to whether the Secretary of the Treasury can send, and how much is being sent, by mail, and if so, how much is insured, at what rate, and what this whole thing is costing the Government. That is what one of the resolutions calls for. And my purpose is to get the information before Congress so we can bring about the reforms that the chairman of the Appropriations Committee wants, and that the people want, and that the banks want.

The CHAIRMAN. Then it is a question of what is shipped by the banks?

Mr. GAINES, of Tennessee. No; by both. One of my resolutions, No. 100, covers the Federal proposition, and the other resolution, No. 99, covers the banks and individuals.

Mr. DALZELL. I do not see anything in any resolution before us now relative to the carriage by mail of these securities, their insurance, and all that sort of thing.

Mr. GAINES, of Tennessee. If the gentleman will read resolution No. 100, page 2, and section 2, he will see that the Secretary of the Treasury is requested—

to inform the House whether or not, and what amount and the cost to the Government, its bonds, moneys, and securities are transmitted by the post to and from the Treasury and subtreasuries of the United States, and whether or not, when so transmitted, they are insured, and if insured at what rate, and the annual cost for such insurance, and the total amount of moneys, bonds, and securities that have been thus transported during the past five years.

One of the best bankers in the United States, located in Nashville, wrote me on December 10, 1903—his name is Mr. J. T. Howell, and he is president of the Fourth National Bank of Nashville, a Government depository—

The CHAIRMAN. Mr. Gaines, we have all the information on this subject from the testimony already in the possession of the committee.

Mr. GAINES, of Tennessee. But I am sure you haven't this. Mr. Tawney, in a hearing before the Appropriations Committee, January 24, 1907, asked Mr. Daskam this question:

Why is it not as practicable for the Government to transmit its money and securities by registered mail as it is for the banks, who use the mails of the United States to a very large extent for the transportation of their money in preference to the express companies? What is the distinction between the transportation of Government money and money belonging to private corporations or private individuals?

Mr. DASKAM. A vast part of it, you understand, is in standard silver dollars, and they weigh so much that you can not send them by mail. They send out \$40,000 or \$50,000 a day frequently.

Mr. BONYNGE. Does that show that they do not send it by the mails?

Mr. GAINES, of Tennessee. I will state that they do not send much. If you will look, however, in the Treasury reports of last year, you will find that there was some money sent by mail.

But, gentlemen, the banks do send it by mail, and why can not the Federal Government do the same thing?

There is no testimony that I know of, nor any that I can find anywhere—and I have studied this question for several years—which shows, first, what this contract is; second, its date; third, whether we send any money insured or not; fourth, how much it costs. I assure you, gentlemen, that my effort is entirely nonpartisan and it is entirely for the benefit of the Government and the banks. The banks can not send money because of the heavy express rates. Mr. Tawney asked Mr. Daskam what companies had the contract with the Government now, and he said that there was a contract with only one express company, and that one was the United States Express Company. He also said that there were but two companies going out of Washington, the United States and the Adams.

Now, upon the question of insurance, we find that we have absolutely no testimony whatever. You will find that Mr. Daskam says that they have never taken up the insurance proposition. I have not the time, nor has the committee the time, to hear me fully upon that proposition, but I hope the committee will seriously consider this matter, and I can assure you that I am absolutely nonpartisan.

The CHAIRMAN. But, Mr. Gaines, it is not a question of politics so far as the committee is concerned.

Mr. GAINES, of Tennessee. All right.

Now, I find in one of my speeches, delivered in the House January 12, 1904,^a a copy of this contract. That is a contract made in 1900. The rates on the main line were 20 cents a thousand, and on the lateral lines 60 cents and \$1 in some cases. That is for paper money. I don't know whether this is the contract now, and the committee doesn't know, but in the contract of forty years ago—

The CHAIRMAN. The testimony showed that it was renewed from year to year.

Mr. GAINES, of Tennessee. Ah, but it is the same contract.

The CHAIRMAN. The same contract.

Mr. GAINES, of Tennessee. Exactly; but they are hauling many times as much—

The CHAIRMAN. There is no question about that.

Mr. LONGWORTH. At the same rates?

Mr. GAINES, of Tennessee. At the same rates.

Mr. BONYNGE. But we have all of that information now.

Mr. DALZELL. What good will it do to ask the Secretary of the Treasury to give us information that you are giving us now?

Mr. GAINES, of Tennessee. But this was in 1900.

Mr. DALZELL. But we know how much the contract is for, and we know that it has been renewed from year to year. We know the rates. All of the information asked for we have.

Mr. GAINES, of Tennessee. I suppose the contract is identical, and let us admit that for the sake of argument. But we know to a moral certainty that the amount of money that has to be transported by the Government is fully fifty times what it was forty years ago.

The CHAIRMAN. But we are referring to what they said about it in 1907, and this is the fiscal year 1908.

Mr. GAINES, of Tennessee. I have not been able to get at the contract, and I want to get at the amount transported.

^a See Congressional Record, Fifty-eighth Congress, second session, pages 671-676.

The CHAIRMAN. But that is reported every year in order to get the appropriation for it.

Mr. GAINES, of Tennessee. They do not tell us how much it was forty years ago.

The CHAIRMAN. But you can find that out if you will look back at the Book of Estimates for forty years ago; you can get it in that way.

Mr. GAINES, of Tennessee. Of course, if the committee would have me go back and look through the books of forty years ago.

The CHAIRMAN. But what particular use is there in knowing what it cost forty years ago, even if the price is the same?

Mr. GAINES, of Tennessee. The greater reason would be to instantly order the Secretary of the Treasury to change the contract and pay less.

The CHAIRMAN. The difficulty is this, as I understand it: There are only two express companies coming into Washington, the United States and the Adams, and when the Government gets the bids they will be practically the same. Whether they are in collusion or not, deponent saith not, but that is the difficulty. Now in regard to sending by mail, the Government has been sending bills by mail, but not coin because of the weight of the packages. I do not know what the law is on that subject, but that can be very easily found out. It is impracticable to send coin by mail, but they have been sending bills.

Mr. GAINES, of Tennessee. Well, omit that question as to the coin, if you think it is too heavy, but the coin money of the country is a small portion compared to the paper money that the Government of the United States is using.

The CHAIRMAN. I think the cost is greater for the coin; that is my impression.

Mr. GAINES, of Tennessee. Now, here is the regulation based upon the contract of March 23, 1900. I will read it, and you gentlemen can consider the question, as I do not want to take up a moment of your time unnecessarily. (Reads:)

The Government contract with the United States Express Company for the transportation of moneys and securities extends to all points accessible through established express lines reached by continuous railway communication in all the States and Territories of the United States, excepting Alaska, Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington, but does not embrace sea, river, or stage transportation of any kind.

The contract rates for the transportation of all kinds of paper currency to or from Washington are: Between Washington and points in the territory of the United States Express Company reached by it, 20 cents per \$1,000 or fractional part thereof over \$500; sums of \$500 or fractional parts thereof, 10 cents.

Between Washington and points in the territory of another express company, excepting points in Texas, Arkansas, Colorado, Kansas, Nebraska, North Dakota, South Dakota, Wyoming, and the Indian and Oklahoma Territories, 60 cents per \$1,000 or fractional part thereof over \$500; sums of \$500 or fractional part thereof, 40 cents.

Between Washington and points in Colorado, Kansas, and Nebraska, 75 cents for \$1,000 or fractional part thereof over \$500; sums of \$500 or fractional part thereof, 50 cents.

Between Washington and points in Texas, Arkansas, Montana, North Dakota, South Dakota, Wyoming, and the Indian and Oklahoma Territories, \$1 per \$1,000 or fractional part thereof over \$500; sums of \$500 or fractional part thereof, 65 cents.

Express charges are paid by the Government at contract rates on standard silver dollars in sums or multiples of \$500, on subsidiary silver coin in sums of \$200 or more, and on minor coin sent by the Treasurer or assistant treasurers in sums or multiples of \$20, and on national bank notes sent to the Treasurer for redemption in sums or multiples of \$500.

The CHAIRMAN. I think that was explained by the fact that the United States Express Company did not extend over that territory, and they had to make a contract with some other company.

Mr. GAINES, of Tennessee. But why does not the Secretary of the Treasury of the United States make a contract?

The CHAIRMAN. I think it was shown in the hearings that where the United States Express Company did not cover the whole route, but started the package off, that they had to pay other express companies for its carriage, and frequently lost money in the transaction.

Mr. CLARK. But why, Mr. Chairman? Everybody knows, who knows anything about the express business, that the United States Express Company has some other company connected with it that is practically part of it, and which runs out west.

The CHAIRMAN. But that does not extend all over the country, as I understand it.

Mr. CLARK. The United States Express Company does not extend all over the country, but the Adams Express Company does.

Mr. GAINES, of Tennessee. And the Southern Express Company does. That is also another one.

The CHAIRMAN. But the Wells-Fargo Express Company covers the territory west of the Rocky Mountains, as I understand it.

Mr. FORDNEY. Do I understand that you favor the Government transporting money by mail and not by express?

Mr. GAINES, of Tennessee. Yes; as covered by the two resolutions—one resolution covering the Federal Government transmitting the money and securities by express and the other resolution relating to banks and individuals.

Mr. FORDNEY. But you do not understand me. Do you favor the Government transmitting money by mail?

Mr. GAINES, of Tennessee. I certainly do. The bankers do it, and why not the Federal Government?

Mr. FORDNEY. Do you know how much money is being lost through the mails by individuals?

Mr. GAINES, of Tennessee. The bankers at Nashville tell me that they have never lost any; but the money is insured.

Mr. FORDNEY. But the banks of Nashville are not the only banks in the country.

The CHAIRMAN. The banks pay insurance.

Mr. GAINES, of Tennessee. But it is infinitesimal.

The CHAIRMAN. I know; but they pay it.

Mr. GAINES, of Tennessee. Of coudes they do; better pay an infinitesimal insurance than allow it to be lost through the mails.

Mr. GAINES, of West Virginia. If the banks can send by mail, paying the rate of insurance, and send more cheaply than by paying the rate of expressage, I do not see why the Government should not send by its own mail facilities, paying the same insurance.

Mr. GAINES, of Tennessee. Exactly; and it is a very small insurance, practically nothing; but it makes it safe.

Mr. DALZELL. Let me say this: It seems to me that what you are after is to work some change in the contract between the Government and these parties for the carriage of this money. How are you going to accomplish that by passing a resolution calling upon the Secretary of the Treasury for information that we already have?

Mr. GAINES, of Tennessee. I do not think, Mr. Chairman, that we have that information. I have tried to find it in the hearings, and I can not do so.

Mr. DALZELL. But you have given it to us yourself; you have quoted from the contracts, and given the terms of it.

Mr. GAINES, of Tennessee. The contract made in 1900.

Mr. BONYNGE. But you spoke of a contract that was made forty years ago.

Mr. GAINES, of Tennessee. But I want to know why they have not reduced the rate when the amount of money that is transported has so greatly increased.

Mr. DALZELL. That is what we want to know, but we will not know by asking for information that we already have.

Mr. GAINES, of Tennessee. Then let us change the contract.

The CHAIRMAN. Let me call your attention to this, that when you ask for the reasons, you destroy the privilege of the resolution, and it can only come up by unanimous consent.

Mr. GAINES, of Tennessee. Then amend the resolution, if that is necessary, in order to make it a privileged one. What I want is to get at the facts for the benefit of the Government, the banks, and the people.

The CHAIRMAN. My own attitude, as an individual member of the committee, is this: That I have no objection to getting any information on this subject that the House has not already in its possession. I do not care what it is, and I am willing to waive the question of the resolution being privileged.

Mr. GAINES, of Tennessee. I want to say, too, that there are some officers of the Treasury Department who believe with me that this contract ought to be changed because of the increased amount that is now hauled.

Mr. FORDNEY. Would not the Secretary of the Treasury give you a copy of that contract?

Mr. GAINES, of Tennessee. I have been trying to get that information for a long while by communication with the heads of the Department. The Department states that they never have considered the question of insurance. They should take up the question of carrying as much as can be carried through the mail.

Mr. FORDNEY. Every day money is lost in its carriage by mail.

Mr. GAINES, of Tennessee. Do we not lose it by express also? The money can be insured, and why do we not send it by mail?

Mr. FORDNEY. Every day we hear of mail clerks in post-offices and on trains stealing money.

Mr. GAINES, of Tennessee. We have not considered the question of sending this money by mail and insuring it, and why not let the resolution call only for information on this subject. The banks are doing that and they are doing it safely. If we send dry goods or jewelry, Christmas goods, and things of other value through the mail, and insure it as we do, why can not the Government do the same thing. And if there is only one express company—and I am satisfied that there is but one—let us have something to compete with it. Let us make a contract with the Adams Express Company over the lines that they run, with the Southern Company where they run, and with the United States Express Company where it runs, instead of giving

it to one concern that does not run all over the United States. No one contends that it does run all over the United States. Let us make contracts direct with the express companies themselves, and at reasonable rates, instead of giving the whole contract to the United States Express Company. We should only give it to that company as far as it runs, and then make the contracts with the other companies direct. I think we can get lesser rates.

Now, Mr. Chairman, I know you are in favor of the clean money proposition. That is a subject that has been before Congress for several years, and if you will indulge me just a moment—

The CHAIRMAN. But that question is not before us.

Mr. DALZELL. We have something else to do, Mr. Gaines, than at this time to take up a proposition that is not before the committee.

Mr. GAINES, of Tennessee. I am doing my best to conclude this argument.

The CHAIRMAN. But the microbe money proposition is not before the committee.

Mr. GAINES, of Tennessee. But the question of the Government hauling this dirty money is before the committee, the question of the United States Express Company having the right to haul it, and that question should be taken up by the committee. It is a question that applies to all the people of the United States. They should have a reasonable rate, either by express or by mail, and that question ought to be before the committee and ought to be settled. The resolution touches both of those propositions.

Mr. NEEDHAM. Does the insurance company make a special rate of insurance for parcels sent through the mail?

Mr. GAINES, of Tennessee. Oh, yes; they do in your State, in my State, and elsewhere, and in New York State, too. I made a speech at Utica a few months ago, and the bankers came to me and told me how the express companies through which they did send dirty money, even the express companies within a few hundred miles of Washington—

Mr. FORDNEY. What do you mean by dirty money?

The CHAIRMAN. Gentlemen, I hope that question will not be insisted upon.

Mr. GAINES, of Tennessee. Well, gentlemen, I do not want to discuss that particular question, then.

I thank the committee, and I think it ought particularly to consider the question of sending this money by mail and the insuring of it. I am satisfied that that matter has not been fully considered by the Secretary of the Treasury nor by this committee.

The CHAIRMAN. We are obliged to you for your appearance, and I think the committee will take time to look into these subjects, and if there is any information that the House has not at present we will endeavor to secure it and report upon this subject.

Mr. GAINES, of Tennessee. I shall be entirely satisfied with that.

Whereupon the hearing was concluded.

APPENDIX.

RESOLUTIONS UNDER CONSIDERATION.

[H. Res. No. 99, 60th Cong., 1st sess.]

Mr. Gaines, of Tennessee, submitted the following resolution:

“Resolved, That the Secretary of the Treasury of the United States be, and he is hereby, requested, if not incompatible with the public service:

“First. To transmit to the House a copy of all existing contracts the Treasury Department of the United States has with any express company or companies for transporting for the several banks, State and national, and other banking institutions in the United States, and private individuals thereof, their respective moneys, bonds, and securities to and from the Treasury and subtreasuries, and inform the House whether the charges for such services have been raised or reduced during the existence of said contract, the annual cost of such services for the past five years, whether the rates for said services are the same in the different sections of the United States, and if they are different the reasons therefor, and the amount transported under said contracts.

“Second. To inform the House whether or not said banks, banking institutions, and individuals transmit their moneys, bonds, and securities, and the amount, through the post, and whether or not they are returned to the senders through the post, and the cost to the Government, said banks and individuals, if any, and whether or not the Department requires said properties, while in transit, to be insured, and if so, at what rate, and whether or not any losses have occurred of said properties while in transit by the post, and such other pertinent information the Department has in its possession which will inform the House of the manner in which this system of transportation operates in performing said services.”

[H Res. No. 100, Sixtieth Congress, first session.]

Mr. Gaines, of Tennessee, submitted the following resolution:

“Resolved, That the Secretary of the Treasury of the United States be, and he is hereby, requested, if not incompatible with the public service, to transmit to the House a copy of all existing contracts the Treasury Department of the United States has with any express company or companies for transporting for the Government its moneys, bonds, and securities to and from the Treasury and subtreasuries, and inform the House whether the charges for such services have been raised or reduced, the annual cost of said services for the past five years, whether the rates therefor are the same in the different sections or States and Territories of the United States, and, if they are different, the reasons of the Department therefor, and the amount transported under said contract of said moneys, bonds, and securities

during the past five years; and further inform the House whether or not said moneys, bonds, and securities, while in transit to or from the Treasury, are insured, and, if they are, at what rate and annual cost therefor.

“Second. To inform the House whether or not, and what amount and the cost to the Government, its bonds, moneys, and securities are transmitted by the post to and from the Treasury and sub-treasuries of the United States, and whether or not, when so transmitted, they are insured, and, if insured, at what rate, and the annual cost for such insurance, and the total amount of moneys, bonds, and securities that have been thus transported during the past five years.”

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A PERMANENT TARIFF COMMISSION

HEARINGS

BEFORE THE

SPEAKER OF THE HOUSE OF REPRESENTATIVES
AND THE CHAIRMAN OF THE COMMITTEE
ON WAYS AND MEANS

60TH CONGRESS : : 1ST SESSION

FEBRUARY 4, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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PERMANENT TARIFF COMMISSION.

HEARING BEFORE THE SPEAKER AND THE CHAIRMAN OF THE
COMMITTEE ON WAYS AND MEANS.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Tuesday, February 4, 1908—3 o'clock p. m.

Present: Hon. Joseph G. Cannon, Speaker of the House of Representatives, and Hon. Sereno E. Payne, chairman of the Committee on Ways and Means.

Present also, John W. Van Cleave, President National Association of Manufacturers; H. E. Miles, Chairman of the Tariff Committee of the National Association of Manufacturers; E. S. A. De Lima, New York Board of Trade and Transportation; N. J. Batchelor, Master of the National Grange; A. B. Farquhar, New York Manufacturers' Association; G. W. Sheldon, L. W. Noyes, of Chicago, representing the National Business Men's League of America; H. T. Clinton, Automobile Manufacturers' Association; G. A. Stephens, Moline, Ill., National Association of Agricultural Implement and Vehicle Manufacturers; F. C. Schwedtmann, St. Louis, National Association of Manufacturers; T. S. Young, Interstate Cottonseed Association; McCuida Mackenzie and S. H. Cowan, of Texas, National Live Stock Association; A. L. Goetzman, National Millers' Federation; E. L. McLain, of Ohio; William A. Vawter, New York Manufacturers' Association; F. W. Upham, John M. Glenn, J. E. Wilder, Illinois Manufacturers' Association; H. R. Towne, Thomas H. Downing, and S. C. Meade, Merchants' Association of New York; A. H. Saunders, Reciprocity Tariff League, Chicago; W. R. Cirwine, Secretary Reciprocity League, New York; George F. Stone, Secretary Board of Trade, Chicago, and others.

STATEMENT OF MR. J. W. VAN CLEAVE, PRESIDENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS.

MR. VAN CLEAVE. I will not take up any time, which is precious at this moment, in reading the names of the gentlemen who are present, but will merely content myself by giving you a list of them, and whom they represent. We are here representing various industries and large interests in the way of cattle raising and agriculture, as well as manufactures in many, if not all, of the great industries of this country. We also come to you in our capacity as business men—men who are conducting the manufacturing interests in this country,

and who occupy the dual position of both manufacturer and merchant, as many manufacturers do. We believe that this great question of tariff and schedules could be better handled by, as we term it—and I am sure you will pardon me, Mr. Speaker, if I use a phrase in this connection—the hard-headed, common-sense business view. We mean no discourtesy to Congress in the use of that phrase at all, but we do believe that the everyday application of business matters, of business affairs, and our way of looking in through the substance or through the body to the real question, is the best way, and for that reason it has occurred to us, and we are firmly of the opinion, and the opinion seems to be growing and spreading all over this country, that the matter of the tariff and schedules and rates should be passed upon through a commission known as a tariff commission, who might investigate and be empowered to investigate not only the cost but the application of the cost of production, and so forth, and so forth; and we also believe, if such a commission was appointed, with power to make these investigations and to recommend to Congress such schedules as in its opinion should prevail, having in mind also the desire and the necessity of increasing our foreign trade, that great good would result to the country, to the manufacturing interests, and to the people. I want to try to impress upon you just this thought. I believe, in fact, I know, that the people are in favor of this, as well as we manufacturers and business men. There is not any doubt about that. Of course, there are reactionaries and there are people who are flighty, and who want the world turned upside down in a day. We want just the opposite. We want a sound and a rational business application to this subject.

There are quite a number of other gentlemen here that I should like to have express themselves in a brief way, and I will not take any more time but will leave it to them to present our plans. Mr. Saunders, of the Reciprocity Tariff League, of Chicago, will now address you.

STATEMENT OF MR. A. H. SAUNDERS, REPRESENTING THE RECIPROCITY TARIFF LEAGUE, OF CHICAGO, ILL.

MR. SAUNDERS. Mr. Speaker and Mr. Chairman, I shall not detain you more than a few moments. If I represent anything in this matter, Mr. Speaker, I must say it is our basic industry of agriculture. For something like twenty-five years I have been in very close touch with men who live on the soil of our prairies and plains. In my capacity as the editor of an agricultural periodical, I suppose I talk to a quarter of a million people a week, and I meet them frequently, and everywhere, in nearly all of the different States.

Several years ago President McKinley graciously appointed me a member of the United States Commission to the Paris Exposition, at the request, I think, of Secretary Wilson, and I was told that was intended to be in special recognition of what I had tried to do all my life for agriculture. While on the other side, Mr. Speaker, I could not help but be impressed with the fact that there is an enormous market in continental Europe for the surplus products of our western farms and ranches, a market that we do not now possess, and which I fear we can not obtain except through additional legislation. When the American Reciprocity Tariff League was organized, growing out of the National Reciprocity Tariff Convention in

Chicago in 1905, the agricultural interests insisted on my taking the chairmanship of that organization, a position which I did not seek and which I have repeatedly tried to resign. They took up immediately this question of trying to broaden our markets for our breadstuffs and provisions. There are two countries in Europe alone, France and Germany, with a population of 90,000,000 people, who are on short rations constantly, short of bread, short of meat. We have them both in abundance and to spare, and the view of our western people is that the reason we can not get those markets is through the breaking down of the reciprocity feature of the Dingley bill. Section 4 is dead. The provisions of section 3 are so narrow that it is impossible, as shown by recent agreements of both France and Germany, to gain anything of real value to the West. We must have something more. Germany is a great industrial power. The great problem of her rulers now is cheap bread and meat for her people. It has been said that we do not need to change our attitude toward her, because she must buy of us, anyhow. The mere fact that she can supply herself from such countries as the Argentine, the Danubian provinces, India, and Canada, is a sufficient answer to that and while we have been waiting and hoping that Congress would do something to help us obtain those markets our neighbors on the north have stolen a march on us and have already signed a treaty which gives them an entrance to the French markets with every variety of farm products that they produce in the entire dominion, including live cattle, meats, grain, dairy provisions, and so forth. They are at this moment negotiating with Germany, which market is infinitely greater to our western people than is that of France, and unless there is something done they will beat us into Berlin as well as into Paris. The German people are practically without meat. We have the assurance from high sources in Berlin that if we would "tote fair" with them, as they call it, they would open the ports of Hamburg and Bremen to trade in live cattle, for example. They would remove their sanitary restrictions on that side as a part of a bargain of that kind, and when you consider that Great Britain alone pays out \$35,000,000 in cash in the Union Stock Yards annually for live cattle, you see the possibilities of the continental market for our western farmers.

Mr. CANNON. I would like to ask you, just for my own information, are you proposing a different agreement, if you had the power, with Germany for a little bit of a market by opening up Hamburg and the other point you mentioned, that would give a preference to Germany over what we would give to Great Britain, which takes substantially one-half of all our products?

Mr. SAUNDERS. No, sir; I should favor extending any privileges that we extend to Germany to Great Britain as well.

Mr. CANNON. And all the balance of the world?

Mr. SAUNDERS. To those nations that treat us rightly and fairly. However, I am not addressing my remarks exactly to the main question. I simply say that the interests of the people I represent in this matter, in so far as the commission is concerned, is incidental. We look on the commission as a means toward an end. We believe that if we had a fair impartial tribunal like this established, we could go before them and make out a case which they would recommend to Congress, and it would be so convincing that it would almost certainly meet with the approval of all fair-minded people.

Mr. CANNON. Let me ask you, just before you leave the subject of reciprocity. As I understand it, under the German policy, there is an exceedingly high tariff upon our meat products?

Mr. SAUNDERS. Yes, sir.

Mr. CANNON. Am I correct in thinking and understanding that they are on the free list for Great Britain?

Mr. SAUNDERS. Yes, sir; the German minimum tariff which we now enjoy under a temporary arrangement is so high that it is practically prohibitory, Mr. Speaker, on many of our farm products. They have withheld reducing the minimum until we get ready to treat with them. Her minimum is a floating minimum, subject to negotiation or treaty. It is not fixed.

Mr. CANNON. Yet we are as well off as any nation on earth, are we not, with Germany on such products?

Mr. SAUNDERS. No, sir; I think not. Germany permits certain animals to cross the frontiers from adjacent countries. We are practically discriminated against, but that is a matter of detail that I can scarcely go into just now. It amounts to discrimination.

This matter of the tariff commission, it seems to me, Mr. Speaker, ought to have your serious consideration, not only on its merits, but in its political aspects. I think the creation by this Congress of such a body would go a long way toward eliminating a very troublesome subject from this campaign. That is something worth considering in the present condition of the country. We are under the shadow of a great industrial depression. We do not want a whirlwind campaign on the tariff this year, Mr. Speaker. It ought to be buried as far as possible, and I believe, for one, that the creation of a preliminary court of inquiry, if you call it such, at this session would enable the Republican party, of which I am glad to say I am a member, to go before the country this summer and say: "Gentlemen, we have provided the means of adjusting all these troubles." You would eliminate a question which will be a disturbing one if it is allowed to continue under discussion throughout the entire campaign, and I can not see wherein you detract in any way from the prerogatives of this House or from your dignity in setting up a board of tariff commissioners. In my business I employ men to run down different subjects for me. I can not do it any more myself than you gentlemen can here. Every member of the Ways and Means Committee has manifold duties of other kinds to perform in this House. They are busy men. It seems to me you could use to good practical advantage the services of such a body as we are asking you to authorize.

I will not take any more of your time.

Mr. VAN CLEAVE. I will now ask Mr. Miles, chairman of the tariff committee of the National Association of Manufacturers, to say a few words on this subject.

STATEMENT OF MR. H. E. MILES, CHAIRMAN OF THE TARIFF COMMITTEE OF THE NATIONAL ASSOCIATION OF MANUFACTURERS.

Mr. MILES. Mr. Speaker and Mr. Chairman, we come before you with much diffidence, and with exceeding admiration, and with full appreciation so far as lies in us of your ability, and the utmost respect for what you do for the country. In no other way could we possibly appear before you.

We ask for a little help. Every gentleman in this room represents a great interest, and feels that his interest is seriously hurt by the existing condition. It is with the utmost respect for yourselves that we say we feel that we are hurt. We want help. Our hurt is not only the hurt that comes from what we lose, but the hurts that come from what we might gain but are not able to gain for want of this thing for which we ask. Long, long years ago it made little difference what schedules were made, if the rate was 100 or 1,000 per cent. The country was under severe competition and our prices covered cost and a reasonable profit. The world has progressed, and we have learned all we could, and we have taken of one another and others in a business sense whatever advantage we could; and we know, each and all of us, that we have taken advantage of the tariff. Some in this room have taken an advantage that is believed by us all to be hurtful to others in this room. Some of us have lost foreign trade, as we believe, because of this present tariff. Some of us are establishing factories in Canada and supplying the foreign trade formerly supplied from this country, from those Canadian factories.

If you have some respect for us, as I am sure you have, I believe you will agree that you will accept the statement that men representing the interests that we do have reason to make. We would not come here without reason, and we come after, not months, but years of study of this question, years of this one belief that we need help at your hands. When we were working under competition and were less advanced in manufactures it made relatively little difference what the tariff was. To-day we have taken such advantage of it, and we have so much further developed all our manufactures, as to have a thousand complications to one that existed many years ago. We know that you gentlemen, having in your hands the affairs of the nation, have extremely great burdens. It takes numbers of us to run our several little establishments, to fix our prices, to find our costs, and do our manufacturing in the right way. You gentlemen feel, if we understand rightly, that you can meet once in twelve years with all your other cares, and more or less incidentally determine what shall be our relations, one to another and to foreign countries, for another ten years. It seems to us that we can scarcely endure to contemplate another ten years with a hasty regulation, and then no regulation until something like the end of that period. We do not want to take ourselves out from under your control, nor the tariff, nor any of our business propositions. We want nothing better than to leave them in your control. We ask you to name five men, more or less. We ask you to take the good that is in our proposition, leaving out the carelessness and lack of knowledge. Take the good that is in it and help us by the use of that good. Give us five to seven men—we care not how humble their names or how humble their position—but let them be authorized to accept not only of our findings, our figures, our requests, our judgment, but to compel anyone who wishes governmental assistance through the tariff to come before you—in other words, before this commission of your making, your servant commission—and justify in the facts. We ask nothing else. We ask that you name somebody before whom we can come continuously, at any time, and by its assistance bring to your attention what we deem to be our necessities.

We are extremely in earnest, because we feel we are suffering an extreme loss, and it seems to us that when we ask so little, and after

so much of reflection, so much of earnest consideration, that you will give us the five or seven men, who will stand between you and us, as your servants, and listen to us and help us now and continuously. I think that is all I can say.

Mr. VAN CLEAVE. We would like to hear now from Ex-Governor Batchelor, of New Hampshire.

STATEMENT OF MR. N. J. BATCHELOR, MASTER OF THE NATIONAL GRANGE.

Mr. BATCHELOR. Mr. Speaker, I appear here representing the farmers' organization known as the Grange. This is composed of people of all shades of political belief, Republicans, Democrats, and Prohibitionists. It has local and county and State organizations, as well as a national organization. It is an organization of about 1,000,000 members, represented in thirty States. At the annual meeting held at Hartford last November, with representatives from twenty-six States, a resolution was unanimously adopted favoring the appointment of a nonpartisan tariff commission to consider this tariff subject. Now, I am not here, Mr. Speaker, to enlighten you or anyone else about the operation of the tariff laws, but I am here to express to you the feeling that I understand to exist among the farmers in regard to this matter. There are some things which they do not understand. They are sceptical as to the results of some of the tariff provisions. Now, when they are told, and it is not successfully contradicted as I understand it, that farm machinery is sold in other countries cheaper than it is here, they wonder why that should be so. When they pay \$125 for a binder, and some fellow in some foreign country buys it for a less price, they do not understand why it should be that way. Then, Mr. Speaker, when it is stated that steel rails are sold to the Grand Trunk road, and when delivered upon the side of that track located in the United States are sold for one price, and yet when delivered upon the other side of the track in Canada are sold for a less price, they do not understand quite why it is so, if it is so. I might refer to other instances of this kind.

Mr. CANNON. What would you say about agricultural machinery—

Mr. BATCHELOR. And then it seems to us that a commission of this kind would be able to study this question, and if these are facts, to so state to the people. If they are facts, and it is of advantage to our people to have it that way, why, so state it. If they are not facts, then have these statements contradicted. We believe that something of this kind would be of great benefit to the farming people of the country.

Now, Mr. Speaker, I do not understand that this commission is any reflection on the ability or the fidelity of Members of Congress. We understand that Members of Congress have a great many duties to perform. They are not able to give the time and effort to the study of this question which it seems to us its importance demands; and then also, in addition to that, it is frequently stated that there are some Members of Congress who are influenced by local conditions, that tariff schedules which have built up business in their locality would influence them in their action upon the subject. I do not think, Mr. Speaker, that that has ever been charged up against you.

I think you do what you think is right regardless of the result; but that enters into it, and there are various other things which I might state. But, summing it all up, Mr. Speaker, speaking for the organization, and speaking for the farmers of the country, we believe that benefit will be derived from the appointment of such a commission, that would report to Congress, and upon whose report Congress could take such action as it saw fit in regard to the tariff schedules, some of which have been established so long that perhaps the welfare of the country would demand a change. I thank you.

Mr. VAN CLEAVE. I will now ask Judge Cowan, of Texas, to speak on this subject.

STATEMENT OF MR. S. H. COWAN, REPRESENTING THE NATIONAL LIVE STOCK ASSOCIATION.

Mr. COWAN. Mr. Speaker and Mr. Chairman, a Democrat in the presence of so many Republicans would ordinarily feel very much embarrassed were it not for the fact that they come around to us any way in order to revise the tariff, and we have an abiding faith that that is going to be done. We do not know when it is going to be done, or whether it is going to be done in our time or not, but we at least expect it for our descendants; but when they get to revising the tariff, the people where I come from, and the people whom I represent, are afraid that somebody is going to get the best of it. It is a most difficult and complicated proposition. For example, I am representing here at this particular meeting, in connection with Mr. Mackenzie, of Colorado, who is well known, the American National Live Stock Association, which organization takes in practically all of the organizations of live stock people west of the Mississippi River; and I also represent the Cattle Raisers' Association of Texas, which, as a cattle raisers' association, is practically the only very large cattle raisers' organization in the country. It embraces the great breeding ground of the Southwest, not located merely in Texas by any means. We do not sell any cattle in Germany or France; we do not sell any dressed beef; the people who belong to the National Live Stock Association engaged in raising hogs in the great Missouri Valley do not sell all their fresh pork in Germany or France or any other continental country of Europe except Belgium.

We meet and talk about it out there and have big conventions, and everybody goes for the party. We pass resolutions, and we say that we have understood it is because of the tariff laws in this country that we do not ship any cattle into continental Europe except to Belgium, and that we ship no dressed beef into a single country of continental Europe except Belgium, and no fresh pork into a single country, and sell less than \$2,500 worth of hams in France during the year. They tell us that the reason of that is because of the tariff on articles manufactured in that country. Then we come up to Congress and we talk with our Congressmen about it, and they at once tell us that it is a very complicated question, and when we approach some Senators and some Congressmen they tell us, "Well, you do not know what you are talking about, because if you go to reduce the tariff on articles shipped from Germany and France and Austria and other continental countries of Europe England will kick about it, and does not England take more of your beef, hogs, and

and other agricultural products than any other European country?" We say, "Yes; we guess it does." They say, "Well, are you not afraid that you will hurt trade with England if you reduce the tariff on articles from Germany and France and other continental countries of Europe? Would not England kick about it and quit taking your agricultural products, and would you not be worse off than when you started in?" We say, "We do not know; it is a very complicated question. That is what we have you in Washington for." If he is a Republican he says, "We can not do anything because the people here in the East control the matter;" and if he is a Democrat he says, "The Republicans are in the majority, and I can not do anything;" and the result is that we people in the West have a pretty hard kick coming against somebody, but they do not know exactly who it is.

We pass resolutions as long as the moral law, and we send them here. They tell us that they are put in the waste basket, and I suppose that they are, although we have no proof that they reach here, except for the regularity of the mails.

Now, we are willing to admit that this is a complicated and difficult question. We think it is quite important to determine whether or not we shall be excluded from shipping dressed beef into France by reason of a high tariff on brass jewelry. I have been told that that has a good deal to do with the matter. I do not know. There is not a single man in the West who knows. The farmer does not know a blessed thing about it, but somebody tells him that is true. We have been depending on Congress for a long time about this, and have been kicking about it, and nobody has paid any attention to it that we can discover; and now we come here asking Congress to at least deal fairly in this matter. They say: "Mr. Farmer, and Mr. Stockman, and Mr. Manufacturer—out in the West, at least—you do not know much about it; you are not informed on this; but there are people who are, and we confer with them, and they tell us what to do, and we find out from them." Well, people say: "We have just a little bit of suspicion that you go to those who are most interested about this thing when you try to find out what to do, and that in the doing of it we have been put in the soup, because we find that we can not send our cattle and dressed beef or hogs that we raise to the continental countries of Europe, and we would like to do that." So these gentlemen, representing various organizations, come here at their own expense—none of them running for office, and none of them could get office if they did run for it—to have the pleasure—and they treat it as a privilege, Mr. Speaker—of asking Congress to appoint a commission through some method which will be independent and fair, and which we can trust, to see what ought to be done and to report it back to Congress.

Now, that looks fair. It looks as if this Congress ought to be willing to have a commission appointed. It can not hurt them. If they want to deal fairly with us, have a competent commission appointed. Select people without regard to their politics and in the hope that they have none, and appoint them to investigate the subject, to inform themselves, to get knowledge, to do it impartially, and then report to Congress, in order that we may not keep up this dispute as to whether somebody up here is right or whether somebody out there is right. We are willing to submit the matters to the fair judgment of an impartial commission, and on what ground can

Congress object to appointing one? They say, "It will not do any good; we will appoint a Congressional committee to do it." I want to say that the Congressional committee men down in my State, and in Oklahoma, Kansas, Colorado, and Missouri, are extremely busy in another sort of business just after Congress adjourns, as you will observe a little later on. They have not the time. It is impossible. You might as well say that Congressional committees can regulate the railway rates of the country. The tariff proposition, as it confronts us, affecting our foreign trade, our industries at home, and the vitality of this country as an industrial nation, is as complicated a subject as we can find. Why should it not be submitted to a committee appointed by virtue of a law which you enact, appointed by the party in power, to determine fairly what ought to be done, and to report it to Congress? Whether Congress adopts its recommendation or not, we could at least get one fair shake where we knew the men were not influenced by the interests that happen to surround them. There is no denying the fact, Mr. Speaker, I know, that when a man lives in a manufacturing district where all his people are strongly in favor of a high protective tariff, if he comes to this Congress he must be in favor of that; and if he lives in a farming district where they are in favor of a revision of the tariff or perhaps a low tariff on some articles and a high tariff on wool and hides, I say he has to be in favor of that or he can not get here. So we realize that with the multitude of businesses and the multitude of thought, it is impossible to get perfectly fair and independent expressions, however much the Members of Congress desire to do it.

Now, they tell us that this is not needed in the country; that the country does not demand a tariff commission; that we do not know. We are much like the old negro who went to hear his master deliver a lecture on agnosticism. He waited at the schoolhouse door until his master came out, and the old man said, "Mose, how did you like the lecture?" "Well," he said, "I guess I liked it pretty well, but," he said, "there is just one thing you said that I thought you ought to have said a little different." "What was that, Mose?" "You know you said there was no Holy Ghost, and there was no heartfelt religion." "How do you think I ought to have said that, Mose?" "You ought to have said, not that you knows of." [Laughter.] There is a public sentiment west of the Mississippi River which is strong, which is demanding that Congress pass some law that will give a fair opportunity to have this matter investigated, determined, and reported to Congress. We make no political threats, because we do not know how we will vote; but we do want Congress to do this as a matter of fairness, quite independent of politics, and we hope, Mr. Speaker, that you will give the matter fair consideration, as we believe you will, and determine whether or not we are right. We do not think that anybody can be hurt if it is done, unless it is somebody who has such an interest in the matter that he ought, in behalf of the rest of the people of the United States, to be hurt. Somebody must always be hurt by any regulating laws, of course. The idea is to do the greatest amount of good to the greatest number, but to do it presently and during the present generation. That is what we have come to ask to have done. I thank you.

Mr. VAN CLEAVE. Mr. Mackenzie, do you wish to be heard?

STATEMENT OF MR. McCUIDA MACKENZIE, REPRESENTING THE NATIONAL LIVE STOCK ASSOCIATION.

Mr. MACKENZIE. I think Mr. Cowan has stated all I care to say. I would say, Mr. Speaker, that the people of the West, whom I represent, are very anxious about this. They are very anxious that something should be done to see if the markets of the foreign countries can not be opened to us. We have a surplus of meats in this country, and very often the surplus rules the price of the whole. If we could get the markets of the continent of Europe open to us, we feel that we could get a better market. It is of the utmost importance to us that something should be done, so that we should not be closed out entirely. England refuses to take any live cattle for immediate slaughter. Germany refuses to take them at all, and you may say that we are absolutely restricted to this country.

I do not care to say any more at present, because Mr. Cowan has expressed my views in the matter.

Mr. VAN CLEAVE. Do you wish to say anything, Mr. Schwedtmann?

STATEMENT OF MR. F. C. SCHWEDTMAN, OF ST. LOUIS, MO., REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS.

Mr. SCHWEDTMAN. I do not care to say anything except that the world has changed more industrially in the last ten years than ever before; and, of course, tariffs that might have been wise ten years ago are not necessarily wise now. I think that any change in schedules could be made more wisely by men who had time to give to the subject. That is all I have to say.

Mr. VAN CLEAVE. Would you like to be heard, Mr. Stephens?

STATEMENT OF MR. G. A. STEPHENS, REPRESENTING THE NATIONAL ASSOCIATION OF AGRICULTURAL IMPLEMENTS AND VEHICLE MANUFACTURERS.

Mr. STEPHENS. I would like to ask what was in the Speaker's mind when he asked Judge Batchelor a moment ago, during his remarks, "How about agricultural implements?"

Mr. CANNON. It was exactly this: Without knowing how the matter is, it has been charged as to agricultural implements that they have been sold persistently abroad cheaper than at home. The reply has been made that the agricultural implement dealers were justified in trying to build up a trade and to establish it abroad in addition to occupying the home market. It has been also said that they send the surplus and machinery that perhaps is out of date a little bit in the United States abroad; and it has also been further justified or attempted to be justified—and I think you would know more about it than I do—where a great establishment is being run, turning out hundreds of thousands if not millions of dollars' worth of products, with your skilled labor and your plants, that after you have occupied the home market, it was found to be economical from the standpoint of your help and the maintenance of your plant that you should dump the surplus, if I may be allowed that expression, even at a cut rate, abroad, and that that of itself enabled you to supply the home market more reasonably than you otherwise would.

And it has also been claimed that all nations do this. We know that Germany and Russia for many, many years paid a bounty upon their sugar that was exported to the United States, selling it here much cheaper than at home—justified, probably, from the same standpoint, to keep their people employed, and establish their markets. It was more of a question, knowing that some of you gentlemen manufacture agricultural implements, that I asked really for my own information about it, not with any idea of criticising the agricultural implement manufacturers or any other producers.

Mr. STEPHENS. Will you allow me to answer it?

Mr. CANNON. Why, certainly. It is more in the shape of a query than anything else.

Mr. STEPHENS. I speak for manufacturers of preparatory tools. We plow, we plant, and we cultivate. That is as far as I go, or as far as the Moline Plow people go, because they are the people I represent. We do not harvest. We make goods for wheat, corn, cotton, sugar beets, and rice harvesting or handling. We sell largely in the markets of the world, principally in South America and in South Africa. We sell in every country in the world, so far as competition is concerned, except Canada. We sell for more money in our hand in New York City before the goods leave the United States than we get from anybody in the United States for the goods. We sell a different class of goods, because they have less agricultural experience with modern tools abroad than they have here, and therefore we make them a little heavier. We adopt some methods of protection as against breakage of the goods for the foreign trade that we do not use here.

So far as dumping the goods is concerned, it would be impossible. Everything we make for the foreign countries is special. Our prices are better; we make more money out of the foreign trade than we make out of the trade in the United States or any of the United States. We get it in cash. It is our universal and unchangeable position to accept cash in New York City on the bill of lading, and never otherwise. We never have dumped a dollar's worth of goods in Europe, and they would not take that class of goods from us. They are learning rapidly the value of American goods. Ransom Simms and Jeffries, of England, and Rud. Sach, of Bavaria, have not come up to our standards. When they do, or if they do, our trade abroad, under the present conditions, will cease. They can not make goods to-day to compete with America, and that is the reason we enjoy a preference over them.

Mr. CANNON. Then all this hurrah that we have heard for the last ten years on the floor of the House and upon the stump in political campaigns about agricultural implements being sold cheaper in Canada and cheaper in the world than they are at home is bald misrepresentation?

Mr. STEPHENS. So far as our class of goods is concerned, it is an absolute falsehood.

Mr. CANNON. I am very glad to hear you say it, because that is authoritative.

Mr. STEPHENS. Absolutely, for the class of goods that we make.

Mr. CANNON. That is an authoritative denial of what has been claimed.

Mr. STEPHENS. We are being driven out of Canada for the reason that we will not domestically incorporate and build. Canada says,

"Come over and make your goods on our side of the line. If you will not do that the taxation will be severe upon you." It is so very severe upon us now that we are vacating Canada. The tariff is so heavy upon our goods that we can make no money. They have given us the preference until late years, when our goods are being made in Canada, and they are being made of about as good a class and type as we are making. That is not true of any other country in the world outside of the United States except Canada.

Mr. PAYNE. Am I right in inferring that you have built up a good foreign trade outside of Canada?

Mr. STEPHENS. We have a good trade in South America and South Africa. In Canada we have had a good trade which we are losing to-day because we can not stand the prohibitive tariff they have put upon us. I do not know that it would be fair to cover further the line of agricultural implements; but I would like to have Mr. Metcalf tell how the harvesters and the other implements, which start with the preparation of the ground and which complete the harvest, are handled abroad. I am very frank and positive in my statement about the line of goods I represent.

Mr. VAN CLEAVE. Mr. Metcalf, do you wish to speak on the subject?

STATEMENT OF MR. E. D. METCALF, OF AUBURN, N. Y.

Mr. METCALF. I did not intend to speak on the subject, but will only reply to the question which has been asked. We manufacture a line from the line mentioned by Mr. Stephens to the complete sheaf of grain. We do not manufacture thrashers, but up to that. Our line of goods is sold abroad uniformly. We sell in every country of the world where grain is grown; but we are forced under some circumstances to manufacture the goods in those countries. We have been obliged to build a factory in Canada by reason of the Canadian tariff. We have been obliged recently to build a factory in Sweden, and we have been considering building another one in Russia, which takes more of our goods than any other country in the world.

Mr. PAYNE. You have a large trade also in Germany and France?

Mr. METCALF. We have a large trade in every nation of the world where grain is cut, but our method of doing business is somewhat different from that of Mr. Stephens, and other lines. We go there with our own missionaries. We establish our own house; we build and own warehouses and carry stocks of goods in all the countries and sell them there the same as we do in this country. We do business differently from the way it is done in almost any other line of exported machinery.

Mr. VAN CLEAVE. Where would the tariff commission benefit you? Am I taking too much time, Mr. Speaker?

Mr. CANNON. No; I am very much interested in listening.

Mr. METCALF. What is the question?

Mr. VAN CLEAVE. I asked a question that popped up in my mind, and probably I ought not to have done so. The question was wherein the tariff commission would benefit you.

Mr. METCALF. I did not expect to speak on this question, because possibly I might differ from some of my colleagues who are here to-day. I have always been an advocate of reciprocity; but I am a believer that reciprocity can be obtained best by the party that is in power, and I do not want to see anything done which will disturb that party in power. Whether it can be done best by a commission which can prepare the ground for Congress or not remains to be seen. I have favored that, and I am in favor of anything that will give us reciprocity, so that we will be able to sell our machinery in France, in Germany, and in Austria on the same basis that England can. We are paying to-day something like \$6 per binder more duty in France than England does. We are paying practically \$4 more duty in France on a mower than England does, for the minimum duty is 9 francs per hundred kilos and the maximum is 15 per hundred kilos in France, and we are obliged to pay the maximum. All we want is the same protection abroad by reciprocity as local manufactures have at home. Whether that can be best accomplished by a maximum and minimum tariff or not remains for the powers that be to settle. I believe, personally, without regard to my colleagues here, that that is the only weapon by which we can reach France, Austria, and Germany. I used to go to those countries almost every year, and I came in contact with people there, and know their feelings against this country; and I believe unless we have something to trade on we never can accomplish the results there that we want.

Mr. CANNON. Let me see if I understand you. Considering that England for many of our products has free trade, the great customer that she is to us, and that our duties run at the same rate to England that they do to the other countries of the world substantially, England would be upon a different basis for reciprocity from what the other countries would be. If I gather the substance of your remarks, you would have an even tariff with all the world, and then a maximum tariff to be called into existence against those portions of the world that discriminate against our trade?

Mr. METCALF. Mr. Speaker, I am forced to say that that is the conclusion I have come to in the last few years—that it is the only way in which we can accomplish what we want to do with other nations. I differ from some of my colleagues here, but I believe that is the only weapon that this country can use by which the lowest rate can be commanded in all foreign countries. That is the weapon that Canada is going to use, and by which Canada has been able to accomplish what she has recently through the treaty with France. I am just from Ottawa, Canada, where I had a long conference with Mr. William Fielding, the minister of finance, and Mr. Brodeaux, the minister of merchant marine and fisheries, who negotiated the French treaty, and they both told me that their minimum and maximum tariff was the only means by which they were able to accomplish what we have been trying and wanting to have for years here, an equitable trade treaty with France. They have three tariffs in Canada, as you know, a maximum tariff, an intermediate tariff, and a preferential tariff. They give to France in this new treaty which is now under discussion in the House of Parliament in Canada the intermediate tariff. Otherwise they

would have to pay the high tariff which the United States has to pay. This will give the Canadian manufacturers a great advantage over those of the United States.

Mr. CANNON. I am very much pleased, indeed, to hear of your medicine, and your prescription.

Mr. METCALF. I did not expect to say anything. I do not know whether I ought to have said anything, but you have asked the question, and I have told you what I think.

Mr. VAN CLEAVE. Does any other gentleman desire to speak on this subject?

STATEMENT OF MR. J. E. WILDER, REPRESENTING THE ILLINOIS MANUFACTURERS' ASSOCIATION.

Mr. WILDER. Mr. Speaker and Mr. Chairman, I do not want to take more than a moment. I am sorry that Mr. McCarroll is not here, as he speaks from one end of the leather industry, and I speak from another end of the leather industry—sole leather. For twenty-five years we enjoyed the benefit of raw material. We realized that with the Dingley tariff we were up against a local issue, and over night we were met with the tariff of 15 per cent on heavy hides. So we are now a divided industry. Prior to that time we were able to use the products of this country and export them, in sole leather. Since that time we are only able to bring in foreign hides in order to get the rebate from the Government when we export our leather. Consequently, we are not using for commercial purposes domestic hides, but are obliged in many instances to see them go out of the country, unable to convert them into the finished product. I have favored the appointment of a tariff commission, hoping that there might be such a body of unbiased men to whom we might go with all sides of the question, so that this matter could be thrashed out around a table free from the influences of a local issue.

Mr. PAYNE. I suppose you are aware of the fact that when the Dingley bill left the House and went to the Senate it had no provision for duty on hides in it?

Mr. WILDER. I understood so, and I was surprised between the close of one day and the dawn of the next day to see a tariff swung in. A man's interest, of course, is a selfish interest. Interest in a tariff commission necessarily arises, on my part, in the fact of having somebody unbiased who can get at the real bottom of the thing and make proper recommendations unhampered by the fact that he makes machinery or brass jewelry, or raises cattle.

Mr. VAN CLEAVE. Is there any other gentleman who wishes to speak?

ADDITIONAL STATEMENT OF MR. S. H. COWAN.

Mr. COWAN. I would like to suggest one thing that seems to call for a tariff commission. I disagree with my friend Mr. Wilder in this. We want a tariff on hides. We want it higher. He wants it lower. Who is going to settle that fairly unless you appoint a commission to do it?

Mr. VAN CLEAVE. Does any other gentleman wish to say anything?

ADDITIONAL STATEMENT OF MR. H. E. MILES.

Mr. MILES. I want to say, as to the last committee, that they got the truth, but they did not get the whole truth. They acted so quickly that I suppose they could not get the whole truth. You can not find the costs and the deserts of particular industries in haste. You did not have all the witnesses, and so far as I can find you never had any books of the ultimate or final proof as to the necessities or deserts of any particular industry. You may have had it, but if so, I can not discover it.

Mr. PAYNE. Do you mean in forming the Dingley bill?

Mr. MILES. Yes, sir. Did you have the costs?

Mr. PAYNE. We had information from every possible source—experts and otherwise.

Mr. MILES. Then you gave rates to some that were from three to five times what you could possibly have given if you had had the real costs and prices in the various industries. At least, they are very much more than protection would justify. It seems to me that you had to act too hastily; and our whole plea is, and the theory and general principle that we agree upon is, that you should exhaust the evidence. We have a great deal of feeling along that line, that if you would take more time it would be better. Only two members, as I understand, of the present Committee on Ways and Means were on the committee when the last tariff was made.

The CHAIRMAN. That is all.

Mr. MILES. Only two. The rest of the committee are now, to that extent, unskilled in tariff making. Only seven members of the present Ways and Means Committee were in the House when the last tariff was made. It seems to me that we might allow the Almighty to make a tariff in ninety days, but with our infinite details it does not seem to us possible that you gentlemen can make it and see all our proofs unless you let us start in now to present them; and if you will just get a few men before whom we can bring our books and before whom we will be compelled to bring our books, then if we do take this year to work it out—

Mr. PAYNE. You know there is no eight-hour law in force in the committee.

Mr. MILES. But can you take the whole year and put in all your time on the schedules of the tariff? Well, that is one of our great troubles among ourselves. We have men who say that they acted upon misinformation in telling you what they did tell you, and that you made your tariff upon that misinformation. They are splendid, good men; but we want more time given to it. I would like to say also that we are not working on the principle of dumping, or anything of that kind. We are pretty well agreed on those things, but we want you to have not only the truth, but much more nearly the whole truth the next time.

Mr. VAN CLEAVE. Does any other gentleman desire to speak?

ADDITIONAL STATEMENT OF MR. McCUIDA MACKENZIE.

MR. MACKENZIE. I would like to say just one word more. The reason we want the commission is this: To find out the facts about the production of all commodities. This gentleman thinks it does not cost anything except to produce his leather. He has no idea that it costs something to produce the hide. We in the West feel that it costs just as much, if not more, to produce the hide and to produce the wool as it does this man to produce the leather and to produce the manufactured piece of clothing. If we had time to go before a commission to show them the facts, a commission that would give us more time than a committee of the House or of the Senate, we could produce our facts and convince them that it costs something for the people of the West to produce what this gentleman here converts into leather.

MR. VAN CLEAVE. Mr. Speaker, I am very glad to have these gentlemen talk precisely as they have talked to you. I believe that I would be insane if I were on that tariff commission for six months, and I am not looking for the job; but I do believe, sir, that just these few short talks here ought to demonstrate to you gentlemen that these questions cover such a wide range of interest that Congress could not adjust them all fairly and justly in a century. I would be very glad, Mr. Speaker, to have a word of comfort from you in the direction of the appointment of a tariff commission at this session of Congress.

REMARKS OF HON. JOSEPH G. CANNON, SPEAKER OF THE HOUSE OF REPRESENTATIVES.

MR. CANNON. I did not intend, when Brother Payne was present, to say a word; but to listen. I have listened with much pleasure, and I think with something of profit, to what the several gentlemen have presented. I will be exceedingly brief, or will try to be, in what I have to say, and then I will ask you to listen for a brief period to what Representative Payne may have to say. In a general way, gentlemen, I would call attention to the fact that in this marvelous country of ours, in field and forest and mine and factory, we produce one-third of all the civilized world's products, and thank God we have a profitable, splendid, magnificent market for over 90 per cent, speaking conservatively—some say 95 per cent, but I want to be conservative—of this magnificent production in the United States. And so, under the policies of the people we have had this marvelous development, and the small per cent that we send abroad makes us the greatest foreign trading nation on earth.

This much by way of introduction. I was asked to be present to-day to meet you gentlemen. I am very glad to be present, and yet the fact that no one is present of the House of Representatives except myself and the chairman of the Ways and Means Committee tends to make me believe, business men and manufacturers as you are, that you do not, perchance, fully realize, as we realize, how exceedingly small a man is who is Speaker of the House, in comparison with the whole House, or one who is chairman of the Ways and Means Committee, in comparison with that committee complete and the whole House. You say that the tariff ought to be revised. You

have virtually said that it ought to have been revised the day it was enacted—some of you—that it was wrong in the beginning. It was not perfect, is not perfect now. Perfection is with God, not with humanity. The people rule, and can only rule through organization. So that when you come to enact legislation, some party is responsible for that legislation, and the minority party, whether it be the Republican on the one hand or the Democratic on the other, occupies the standpoint of criticism. This is as it should be, because it puts the majority party on notice and on good behavior. So much by way of clearing away the underbrush a little bit.

We have a fixed law, the Constitution of the United States, the great charter that vests power in the Executive; that vests power in the Congress, legislative; in the judiciary, judicial: each independent of the other; and the Constitution in its provisions declares that the House of Representatives, which touches the people for renewal of power every two years, shall originate revenue measures. The Senate can not originate them. The theory was that constantly touching the people the House of Representatives would voice the sentiments of the people. A Member of Congress by some people is supposed to be an individual who howls and hurrahs; that he need not necessarily have much of knowledge. He represents the people who give him a power of attorney, and cooperates with the others who agree with him from the party standpoint. I never saw it verified more than in this hearing. My friend who makes sole leather winces under the 15 per cent *ad valorem* on hides. My friend from Texas and my friend Mr. Mackenzie stand by the 15 per cent, as well as the duty on wool. My friend here, Mr. Metcalf, voices his opinion as to what reciprocity legislation should be, and I agree with him. My other friend, Mr. Sanders, I dare say, has another notion. Think of it. We stretch 3,000 miles across the continent. You can not make perfect schedules. In the Middle West we do not need any duty on coal. The transportation is the greatest kind of protection against the Nova Scotian coal. I think Pennsylvania and Virginia think that they do need some duty. That is a debatable question. I dare say, in quality and proximity, Nova Scotian coal would not be in it much with us on the Pacific coast. With Vancouver and British Columbia near by, or with the new settlements out there, and the development of their mineral industries, they think they do need protection. I will not debate whether they do or not; but do you think that the Representatives from the State of Washington or from the State of Oregon, and the Senators, are going to allow a schedule to be made without being heard?

Oh, I have heard so much talk in my time. The most magnificent revenue tariff speech I ever heard was made by Randolph Tucker, now dead. Garfield threw him bouquets, and said it was the best presentation from that standpoint he had ever heard. They began reading the schedules under the five-minute rule, and when sumac, which was left on the free list, was read, Mr. Tucker arose in his place and said: "Mr. Chairman, I move the following amendment: To place sumac on the dutiable list." They twitted him and said, "Why, oh thou creature of revenue tariff only, why offer that amendment?" He was honest, and said, "Sumac grows in my district." [Laughter.] And so it runs.

Mr. VAN CLEAVE. That is the best argument in the world for a tariff commission.

Mr. CANNON. My friend says that is the best argument in the world for a tariff commission. We had a tariff commission once, composed of very able men. They performed in the early eighties. We revised the tariff. I am told, Brother Payne, by those who were in that Congress, that they heard all the industries, and the report of the tariff commission was so voluminous that they did not even read it.

Now, mind you, it is quite one thing to make recommendations without a direct responsibility to the people; it is quite another thing to write them into laws, and take the consequences if you make a mistake. Knowledge is great, magnificent; but do you know, I am curious to see if there should be a commission just how it would be constituted—five, or seven, or eleven. My friend from Texas, I dare say, would be upon it. My friend from Massachusetts would be upon it. My friend with the agricultural implements would be upon it. Another friend that would represent—my friend shakes his head; likely not—but another friend would be upon it representing the steel schedule or the iron schedule. Another friend would be upon it representing one-third of the people in agriculture scattered across the continent.

I fear greatly that you would turn into a debating school, just as we do in the House, and that there would be liable to be a majority and a minority report. Maybe not; I should hope not, if this commission is constituted. I am speaking with all respect and courtesy. I never yet have run up against an economic proposition of any kind for which much could not be said, Mr. Chairman, upon both sides. There may be good things in all propositions, and weak things in all propositions.

Now, I will tell you what bothers me more than this revision of the tariff, and I should not wonder if it bothered every man who makes agricultural implements or sole leather or anything else, jewelry, luxuries, necessities, every man that farms or mines. It is, that with the extraordinary prosperity that we have had for almost twelve years past, such employment and prosperity and wage, and consumption and profit, in the grand aggregate, as the world never saw in all its history, we responded by increasing our expenditures. Thousands of men desiring to make profit, and adding to labor by the sweat of their faces made all kinds of ventures; so that in the fullness of time, with that and other factors, there came the liquidating period, and do you know there is not a man within the sound of my voice but what, if he had the power to bring back the condition that existed twelve months ago, six months ago, or last September, would be glad if he could get it back, and say, "That is worth all the revenue legislation that can be enacted," because the farmer loses his customer when the laborer goes out of employment or goes on short time. It acts and reacts.

Now, I have heard men say—I am not one of them—that it would be well if we could not change the tariff in fifty years, so that you could have certainty, and that business would adjust itself to it. I have never given my assent to that proposition. Our people want change from time to time. It may be, and probably will be, that in the near future we can tell more about it, after our conventions meet and make the tickets of the respective parties. The great conven-

tions that make policies may say that revision is to come by the Congress that is to be elected next November. It goes without saying that revision would come if our friends the enemy were in power. It goes without saying that the policies shaped by the National Republican Convention controls the policies of that party.

Now, then, I want to present for your consideration one matter in closing. It may be that you are right, that this commission ought to be appointed at once; but I will assume that there is a commission of eleven—seven and four, or six and five—of the respective party organizations selected to represent the interests of eighty-five millions of people. Now, how much of a debating school would that commission turn itself into? And, in this time of depression and liquidation, as you can not legislate, how, with your meetings held throughout the country, with partisans on one end of the commission and partisans on the other, would the investigation run—from the mere temporary political standpoint or from the standpoint, as one has said, of a court? Nay, nay, you would not be a court.

Now, then, it may be—I am only suggesting this for your consideration—that it would turn out the other way; but it is true that when the tariff is revised, or when revenue legislation is enacted, it will be revised by those upon whom the Constitution imposes that duty. You say that Congress is not fully informed. Let me tell you something. I want to say that I do not believe there is a man in the United States who knows as much of the schedules and who is as well equipped for that work as the gentleman upon whose shoulder I lay my hand [Mr. Payne]. Experts! Why, the Treasury experts, and there are many, connected with the administration of our revenue laws, could give us all cards and spades touching technical information; and so they could with any of you, unless it might be with respect to your particular industry, and I expect they would be nearly as well posted about that as you are yourselves. They are genuine experts.

But, after all is said and done, when this revision is made it will not be perfect. There are all kinds of men in the world, gentlemen. You are practical men. You are not demagogues. You belong to different parties, but I want to put it to you that when the appeal is made to the people for power, all kinds of demagoguery goes, all kinds of misrepresentation goes. I wish I could have had you, sir, my friend from Moline, Ill., in my district some years back, when it was knock down and drag out about the tariff schedules, with charges of selling cheaper abroad than at home, to have had you make your plain statement that you make here. Now, I am not complaining. We will have them again, because when a party is struggling for power and men are striving for office, almost anything, with a great many of them, is "good enough Morgan," provided it will get the votes at the time.

Now, whatever passes the House touching a commission must pass the Senate. They have no previous question over in the Senate. Three Senators might prevent any legislation for the next twelve months, because they only vote after agreement. I have thought that they ought to reform that practice, but they do not think so, and will not in the near future. The Senate has jurisdiction of a bill of this kind. It is not a revenue bill. It is a bill to gather information, when you boil it down.

Mr. VAN CLEAVE. That is all.

Mr. CANNON. If we should pass it through the House, what its fate would be in the Senate I do not know. If I was a practical promoter of this kind of legislation that you ask, I would suggest that you pass through that gate first, because over in the House we can move the previous question, and a majority can order it, and a majority can pass it. Ours is a body of nearly four hundred; theirs is a body of ninety-two. That is the difference.

I thank you, gentlemen, for the honor of your call. I have had to catch your remarks on the fly, and I have had to make my own, in answer, substantially upon the fly. I am sorry that I have taken so much time, because "Old Schedules" here [Mr. Payne], as he is called in the House, can give us all cards and spades. [Applause].

REMARKS OF HON. SERENO E. PAYNE, CHAIRMAN OF THE COMMITTEE ON WAYS AND MEANS, OF THE HOUSE OF REPRESENTATIVES.

Mr. PAYNE. As the Speaker has gone over so much of the ground it is rather hard of him to make the remark with which he closed his address.

I have been a member of the Committee on Ways and Means for eighteen years and for nine years its chairman. I helped to frame the McKinley bill. I helped to fight some of the provisions in the Wilson bill, and I helped to frame the Dingley bill, so that I am pretty familiar with the methods of framing and passing a tariff bill through the House and know something of what has been done in the past. Always the first step is to throw open the doors to the people of the United States and to invite them to come in and give the committee the fullest information on each of the schedules and on both sides of the question. After that process is exhausted, the hard work of the committee begins. The hearings are carefully printed, and of course are accessible not only to the Members, but to the people on the outside who are interested in any manner—those people whose business is affected by the tariff—and frequently during the consideration of a bill people come here and are heard. Anyone is welcome to come here and be heard who knows any fact touching any schedule, or anyone of the 4,000 items in the tariff. I said a little while ago that the committee did not work under the eight-hour law. When they have spent one hundred days in this manner, they are apt to know something about what gets into the bill.

Now; it may be said that it is a partisan matter, and it has been said that the committee is a partisan committee; and one of the arguments in favor of the commission has been that it is designed to take this subject out of a partisan plane and put it on some other plane. I notice that the Beveridge bill and the Miller bill, which I think are identical—and probably you know something about their origin and where they were drawn—provide for a commission of five to hold the position for seven years, and the further provision that not more than three commissioners shall be of the same political party. That simply means that there shall be three commissioners of the party which is in power at the time, and two commissioners who will take the opposite side on the tariff question. You provide for a partisan commission in the very bill which is presented. I

make no criticism of that. It is one of the necessary things that we have parties, and parties are divided. The Committee on Ways and Means is composed of 19 members, 12 of whom are of the majority party and 7 of the minority—about the same proportion as is put into your commission bill, or the commission bill which has been offered. Now we are asked to take up and pass this bill at once, and to set the commission at work. And still you will hardly find a business man in the United States who would ask Congress to take up now the question of revising the tariff and of having hearings and deliberating upon it at the heels of a financial panic and with the further disturbing influence to all business of a Presidential election. A sane man would not desire that to be done. And yet how much more excitement would there be in the country, how much more disturbance to your business, if a commission were substituted for the committee and hearings were had, and the results from day to day published through all the newspapers of the country? Surely you will not insist that a commission bill should be passed at once to take up the question of tariff revision.

My position in regard to a revision of the tariff has been simply this: That whenever a majority of my party thought the tariff ought to be revised I would follow their judgment. Further than that, whenever it appeared to me that it was for the best interests of the people of this country, taking into consideration the disturbance to business which would naturally result, and the benefits which might accrue from a revision of the tariff, I should be for the revision of the tariff.

Now, the thing that brings us closer to a revision of the tariff than anything else is the question of reciprocal agreements with other countries. I said soon after the Dingley bill became a law—and no one knows that better than my friend Colonel Metcalf—that if I ever again had anything to do with the revision of the tariff I should urge a maximum and a minimum tariff, coupled with section 3 of the McKinley bill, authorizing the Administration to make trade agreements with other nations, and that when the President proclaimed the fact that he had procured a fair agreement with any nation it should be entitled to the privileges of the minimum tariff throughout all the bill. That principle was inaugurated in the McKinley bill with my most hearty approval, and the longer it has existed the more I have been in favor of the principle which was embodied. Unfortunately then, and unfortunately, in the Dingley bill, there were not a sufficient number or range of articles that could come in at a lower rate of duty to enable the Executive to make the trade agreements which we ought to have. Do not misunderstand me, gentlemen. I would follow France, and Germany, and Russia in this particular, that the minimum tariff should be a fair protective tariff for American industries, and the maximum should be higher; but I am not forming a tariff bill just at this present moment. I think the signs of the times are that next winter this committee will be forming a tariff bill.

Now, the question is whether the committee should receive the aid of a tariff commission. That is one of the questions. We shall invite in all the aid we can get, all the information we can get—and our power is great to send out and get information. We know where to get the Government experts, for information about all the intricacies

of the operations of the various schedules of the tariff. We know where to get the various decisions as to what the language means in the different schedules. We know where to get the information from manufacturers, or merchants, or mechanics, the country over. Shall we get this information at first hand, confronting the men who present it, cross-examining them and using our endeavors to get at the facts, or shall we delegate that power to another body of men appointed as a tariff commission? Speaking for one, and from what I have seen in the formation of tariff bills, the committee, no matter what the tariff commission might report, would seek its information at first hand. And why? The Constitution—and the older I grow the greater confidence I have in the wisdom of our written Constitution—the Constitution, as the Speaker has said, places the framing of revenue bills and the initiative in the House of Representatives, coming from the people, responsible to the people for their action, for their condemnation or their approval. And that idea is constantly in sight, to do the greatest good for the greatest number, as has been said here to-day, to take care of the industries and the laborers of the United States, to conserve this great market here for the benefit of our people, and at the same time to go out after the markets of the world.

I was not altogether pleased with the Dingley bill. I compromised upon it. There were some things that did not go in there that I wanted, and some things that went in there that I wanted to keep out. If Governor Dingley were living he would say the same thing. McKinley would have said the same thing about the bill that bore his name. Legislation, if accomplished, must be a compromise. It must be framed from compromises. Still, I am not ashamed. I am proud of the McKinley bill. I am proud of the Dingley bill. I think I could improve upon it. There are some things in there that would not have been suggested to my judgment, perhaps, that are wise and good, and ought to be there; but I think I can suggest some things that might have been left out, and some things that might have been in at the time it was framed; but the real reason for revision of the tariff in the near future is the question of seeking further markets abroad, while we conserve those that are here at home. That can not be determined by the fact that sometimes manufacturers dump their goods in foreign markets. There is not a country on earth—I need not tell you gentlemen of that—whose people do not dump their goods on foreign markets. They come in here and pay our tariff and sell their goods at a loss sometimes in order to get our market; and we sometimes have to go abroad and pay their tariff in order to get rid of a surplus of stock or to keep our men at work. But I have sometimes thought that the reason we did not, under present conditions (and we have been making great advances), make greater advances, going out and getting the markets of the world, was the fault of our own people, who were so intent upon this market here that they did not care to go abroad and accept the conditions as they have been accepted by the company which my friend here (Mr. Metcalf) represents; as they have been accepted by the manufacturers of plows, seeking that market where it is, and filling up storehouses abroad with goods and parts, and all that sort of thing, that they may make ready repairs, and at the same time showing them where their goods were superior. In those cases there has

not been any question about the profits. They get as much or more in gold than they get for their goods in this country. But no spasmodic effort, no dumping of goods into a country and then disappearing next year because the market conditions are better at home, will give them any market abroad.

I will not proceed on that line, gentlemen. You probably have gathered from the tone of my remarks that I am not able to see the wisdom of a tariff commission. Now, while I disagree with you, I respect your opinions. I know you are in earnest about them. You do your duty as it seems to you, and I must do my duty as it comes to me. I am willing to receive all the enlightenment I can get upon this subject, and if it should appear to me at any time in the future—but you can not convince me that it should be done at this session of Congress under present conditions—that a tariff commission to last seven years is advisable, I will be very glad to consider the subject. In the meantime I ask each one of you to consider, when a tariff bill is made, and the best effort is made by the men who are appointed under the Constitution to frame and enact that bill, whether it is not better that there should be something like stability about it, that it should not last for a period of years and that the industries of the country and the manufactures of the country should not be harassed from day to day by a body of men whose only business it is to inquire into conditions and say whether a schedule here or a schedule there or an item here or an item there should be changed, and the evidence perhaps, or their opinions, exploited in the newspapers from day to day, thus unsettling business calculations, unsettling the mind of the business world, unsettling manufactures for the possible good at some future day of giving Congress some more light upon a future tariff. Congress does not go into hearings upon the general tariff bill from day to day and from year to year without a present intention of revision, for the reason that the business world frowns upon any such procedure, and even men who come here with special interests and desire a specific thing changed, are content to go away and suffer the ills that they have rather than to fly to the ills they know not of, in the agitation for change in the existing tariff.

Now, gentlemen, I thank you for having invited me to come to this hearing. I have gotten information from the gentlemen who have appeared here. I have stated frankly to you my views. That is generally my fault in such matters, but I say them with all kindness, and yet I say them with a firm conviction that they are right. [Applause.]

Mr. VAN CLEAVE. Mr. Speaker and Mr. Chairman, we thank you both cordially for your kindness and courtesy.

The hearing was thereupon closed.

SALARIES OF
CUSTOMS AND INTERNAL REVENUE OFFICERS

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

MARCH 7, 9, 14, 17, 1908

FINAL PRINT

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS,

HOUSE OF REPRESENTATIVES.

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SALARIES OF CUSTOMS AND INTERNAL REVENUE OFFICERS.

HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS, SATURDAY, MARCH 7, 1908.

Bills under consideration.

CUSTOMS SERVICE.

Com- mittee Docket No.	No. of bill.	Introduced by—	Officers.	Location.	Proposed salary.
30	H. R. 247	Dunwell.....	Night inspectors	New York	Add \$1 per day.
33	H. R. 264	McCall	Inspectors	All ports	Not exceeding \$5 per day. ^a
39	H. R. 292	Dunwell.....	Assistant appraisers	New York	\$4,000.
40	H. R. 293	do	Assistant gaugers	do	Add \$1 per day.
41	H. R. 294	do	Deputy collectors	do	\$4,000.
42	H. R. 295	do	Deputy surveyors	do	\$4,000.
			Deputy naval officer	do	\$4,000.
			Assistant weigher	do	Add \$1 per day.
			Inspectors	do	Not exceeding \$6 per day.
			do	Chicago	Do.
			do	Boston	Do.
67	H. R. 3906	Boutell	do	Philadelphia	Do.
			do	Other ports des- ignated by Sec- retary of Treas- ury.	Do.
71	H. R. 3964	Smith, Ariz...	Collector	Nogales, Ariz....	\$2,000. ^b
			Inspectors	New York	Add \$1 per day.
			do	Boston	Do.
			do	Chicago	Do.
76	H. R. 4052	Madden	do	Other ports des- ignated by Sec- retary of Treas- ury.	Do.
			Day inspectors	Ports designated by Secretary of Treasury.	Do.
83	H. R. 4888	Dunwell.....	Night inspectors	do	Do.
114	H. R. 9155	Bennet, New York.	Assistant appraisers	New York	\$4,500.
115	H. R. 9162	do	Laborers	do	Not exceeding \$840.
123	H. R. 9225	Moore, Penn- sylvania.	Inspectors	All ports	Not exceeding \$6 per day. ^c
147	H. R. 11708	Sherman	General appraisers	All ports	\$10,000.
			Deputy collectors	do	Not exceeding \$4,000.
			Deputy naval officers	do	Do.
			Deputy surveyors	do	Do.
			Assistant appraisers	do	Do.
148	H. R. 11709	do	Examiners of merchan- dise.	do	Do.
			Examiners of tea	do	Do.
			Examiners of drugs	do	Do.
			Special examiners of drugs.	do	Do.
149	H. R. 11740	Kahn	Weighers	San Francisco...	25 per cent addi- tional salary.
160	H. R. 13093	do	Inspectors regularly em- ployed in discharging and loading vessels.	do	Not exceeding \$5 per day.
162	H. R. 13258	Sherman	Deputy surveyors	New York	Same salary as deputy collect- ors.
170	H. R. 13669	Bennet, New York.	Warehouse laborers	do	Not exceeding \$925.

^a Where maximum is allowed, no allowance for expenses for unusual work.

^b Also storage fees.

^c When more than \$4 per day is paid no allowance for expenses for unusual work.

Bills under consideration—Continued.

CUSTOMS SERVICE—Continued.

Com- mittee Docket No.	No. of bill.	Introduced by—	Officers.	Location.	Proposed salary.
171	H. R. 13676	Calder	Watchmen	New York	Not exceeding \$1,000.
197	H. R. 16631	Dunwell	Assistant appraisers	do	\$4,000.
198	H. R. 16632	do	Assistant weighers	do	Add \$1 per day.
199	H. R. 16633	do	{Day inspectors	{Ports designated by Secretary of Treasury.	Do.
			{Night inspectors		
200	H. R. 16634	do	Deputy collectors	do	\$4,000.
			Deputy surveyors	do	\$4,000.
201	H. R. 16635	do	Deputy naval officer	do	\$4,000.
202	H. R. 16636	do	Assistant gangers	do	Add \$1 per day.
208	H. R. 16869	Calder	Night inspectors	do	Do.
			Watchmen	do	Not exceeding \$3 per day.
			Inspectors	do	Not exceeding \$6 per day.
217	S. 4066	do	do	Chicago	Do.
			do	Boston	Do.
			do	Philadelphia	Do.
			do	San Francisco	Do.
			do	Other ports des- ignated by Sec- retary of Treas- ury.	Do.
225	H. R. 17506	Sherman	General appraisers	New York, Bos- ton, Baltimore, Philadelphia, New Orleans, Galveston, Charleston, San Francisco, and other ports designated by Secretary of Treasury.	^a \$10,000.
230	H. R. 17990	Davey	Inspectors		\$6 per day.
232	H. R. 18119	Kahn	Assistant weighers	San Francisco	Add \$1 per day.
233	H. R. 18201	Denby	Inspectors	Detroit	Do.
234	H. R. 18205	Kahn	{Night inspectors	San Francisco	Do.
			{Inspectresses	do	Do.

INTERNAL-REVENUE SERVICE.

139	H. R. 10572	Graff	{Gaugers	All offices	{Leave of absence with pay, 2½ days each month.
			{Storekeepers	do	
			{Storekeeper-gaugers	do	
223	H. R. 17309	{Johnson (Kentucky).	{Storekeepers	do	{Twenty-one days' vacation per year, with pay of \$3 per day.
			{Storekeeper-gaugers	do	
			{Gaugers	do	
231	H. R. 18118	Kahn	{Gaugers	San Francisco	Add \$1 per day. Do. Do.
			{Storekeeper-gaugers	do	
			{Storekeepers	do	
235	H. R. 18332	Langley	{do	All offices	{Leave of absence with pay, two and one-half days each month.
			{Storekeeper-gaugers	do	
			{Gaugers	do	
238	H. R. 18520	Barchfeld	Officers and employees	do	Expenses incurred when injured.

^a Also provides for tenure of office, etc.

SATURDAY, *March 7, 1908.*

The committee met at 10.30 a. m., with Hon. Sereno E. Payne in the chair.

Present: The Chairman, and Messrs. Dalzell, Boutell, Needham, Calderhead, Fordney, Gaines, Bonyng, Longworth, Clark, Cockran, and Randell.

The CHAIRMAN. There are a number of bills that have been referred to the Committee proposing to increase the pay of a number of customs and internal-revenue officers throughout the United States. The clerk has made a digest of the various bills and what they propose. Several of the bills relate to the customs service at New York. Mr. Reynolds is here this morning to be heard; and Colonel Fowler, collector of customs at New York City, stated that he would be here on Monday, at which time we will continue the hearings upon this subject.

We will now hear from Assistant Secretary Reynolds.

STATEMENT OF HON. JAMES B. REYNOLDS, ASSISTANT SECRETARY OF THE TREASURY.

Mr. REYNOLDS. Do you wish me to take up these bills in my own way, or do you wish to take them up yourselves and group them? There are more or less duplicates among them; that is, several have been introduced by different people that cover the same thing.

The CHAIRMAN. You can follow your own procedure.

Mr. REYNOLDS. Roughly, these bills seem to increase the compensation of almost everybody in our service at the port of New York; that is, those that have been introduced by the New York Members. There are bills increasing the salaries of laborers, of day and night inspectors, of assistant weighers and gaugers, of deputy collectors and deputy surveyors, and finally it comes up to the assistant appraisers of merchandise and the examiners.

The opinion of the Department is that it will be very glad to see salaries raised in the customs service, but if only a few can be raised, and it is not possible to increase all along the line—that is, if it is only possible to take some out of this list—speaking roughly and broadly the Department considers that the salaries at the very lowest grade, and the salaries at the highest grade, are the first ones to be changed. It would be very glad to have the salaries of laborers increased, although I think the Department now has the power to increase the salaries of laborers if it had the appropriation.

The CHAIRMAN. Right there; as to laborers, do I understand that the law allows a dollar more a day than the committee appropriated for?

Mr. REYNOLDS. We pay those salaries out of a lump appropriation, and I think that we have the power to increase the salaries as much as we wish, although the Department goes on the principle of keeping salaries practically the same as they are at the Treasury Department, where they are fixed by the Appropriations Committee.

The CHAIRMAN. Is there no limit by law?

Mr. REYNOLDS. Not by law, but the policy of the Department has been to keep the salaries at the figure at which Congress has naturally placed them, by providing for certain specified salaries for laborers in the Department which goes in the general legislative bill.

The CHAIRMAN. What does the Department pay now?

Mr. REYNOLDS. \$720 and \$770 per year, in New York City.

Mr. DALZELL. Is the appropriation for laborers in a lump sum by itself?

Mr. REYNOLDS. The appropriation for the customs service is in a lump sum, not as to laborers or inspectors or anyone apart from the others.

Mr. DALZELL. That is, all of the various positions are included in one lump sum?

Mr. REYNOLDS. We have appropriated for use this year \$10,100,000, and that must take care of all our salaries from collectors down to the laborers, inclusive.

Mr. DALZELL. But some of these salaries are fixed by law?

Mr. REYNOLDS. Some by law, but the laborers are not.

Mr. DALZELL. And others you fix yourselves as you may have the appropriation for?

Mr. REYNOLDS. Yes.

Mr. BONYNGE. Are all fixed excepting laborers?

Mr. REYNOLDS. Inspectors are fixed, and examiners of merchandise at the port of New York are fixed at \$2,500, but no limit is put at any other port. And that is one difficulty that we have, at the port of New York and at other ports as well, in getting the right people for examiners at \$2,500 a year; the ideal examiner, who must pass upon millions of dollars' worth of merchandise each year, must not only be expert, but absolutely honest. It is pretty hard to combine those two qualities in a man at \$2,500 a year, because a man who has both of those qualities can get employment in an outside concern at a great deal more salary than that paid by the Government. It is very hard to retain good examiners in the service at \$2,500 a year. Unless we have good examiners the backbone of the customs service is broken.

Mr. DALZELL. Is it proposed to put it up to \$4,000?

Mr. REYNOLDS. It is proposed here to put it in the discretion of the Department up to that amount; and also as to assistant appraisers. In that way we could take care of the expert examiners, and a man who had been in the service for a long time and had become an excellent examiner could go up to \$4,000 a year, but that would not take in, of course, all of the examiners by any means.

Mr. CLARK. But is not the net result of the method that they always put the salary as high as they can?

Mr. REYNOLDS. We start examiners in New York City at about \$1,800.

Mr. CLARK. At the present time?

Mr. REYNOLDS. Yes.

Mr. DALZELL. And \$2,500 is the limit?

Mr. REYNOLDS. At New York, yes. There are no laws as to any other port. Of course we do not pay them any more at the other ports than at New York.

The CHAIRMAN. How many examiners are there for whom it is proposed to raise the pay?

Mr. REYNOLDS. I should say that if we should take the assistant appraisers and the examiners at the port of New York, and perhaps the deputy collectors and the deputy surveyors, and if this bill should go through and the Department had the money, which it

has not this year without a special appropriation, it would amount at the port of New York to \$35,000 to \$40,000 increase a year. But in making any increases we would naturally make them on merit, not put up the whole grade, but advance individuals who deserve increases for the work they do, and probably an equal amount would be used in all the rest of the country outside of New York. It would take in the neighborhood of \$100,000 to do what the Department would like to do for the examiners, the assistant appraisers, and the deputy officers in different parts of the country.

While I am speaking in connection with assistant appraisers and examiners, I will state that one portion of this bill states that assistant appraisers instead of being Presidential officers, as they are to-day, shall be appointed by the Secretary of the Treasury on recommendation of the appraiser himself; but on that point, whether the appointment shall be taken out of the hands of the President and given to the Department or not, the Department has nothing to say.

The CHAIRMAN. You gave an amount; do you confine that to the port of New York?

Mr. REYNOLDS. At the port of New York alone it would take in the neighborhood of \$40,000, perhaps, to make the increases we would like to make on merit, and probably an equal amount in the rest of the country outside, or possibly a little less. But the Department has not that sum this year, up to July 1, and we can not make any increases without a bill carrying an appropriation with it.

In regard to day inspectors, the Department considers that the bill which would give the Secretary of the Treasury power to pay inspectors up to \$6 a day would be the best bill. That covers the whole country, that is, at any port which the Secretary of the Treasury thinks best, the compensation could be increased to \$6. It is now fixed by law at not more than \$4 at all ports outside of New York and at New York it is \$5. That extra dollar, paid at New York, is to cover the expenses of meals and travel of inspectors. At all of the other ports the limit of compensation is \$4 per day. Whether it would be advisable now to put the whole grade of inspectors at New York up to \$6 a day the Department doubts very much. I think myself it would be better, instead of raising a whole grade—even if we had the authority and the money—to raise that part of it which is peculiarly meritorious, and raise by individuals rather than by grade; that is, we have men in the inspector's force in New York who are worth \$6 a day, and I am sure that we have a great many that are not worth more than \$5.

The CHAIRMAN. You increased the pay of inspectors at New York a few years ago from \$4 to \$5, and that was all asked at that time. Do you think it advisable to increase all inspectors throughout the country to \$6 a day?

Mr. REYNOLDS. No; I would not.

The CHAIRMAN. One of the bills provides for that. There is one other bill, I think Mr. McCall's, which increases them at all the ports to not exceeding \$5 per day.

Mr. DALZELL. The pay is higher at New York than anywhere else, is it not?

Mr. REYNOLDS. A dollar a day higher.

Mr. DALZELL. Why should it be?

Mr. REYNOLDS. I believe at the time it was increased that they took into consideration that living in New York City was higher, and

also the distances covered, the time a man must be away doing the work, bringing an additional expense upon the inspector which he would not have at some of the other ports. This dollar a day was in lieu of any expenses.

Mr. DALZELL. Would not the same thing apply at Philadelphia?

Mr. REYNOLDS. I think Philadelphia is one port where the expenses, in many cases, are fully as much as at New York. The port covers a large territory and the distances are long.

The CHAIRMAN. I think the inspectors at the other ports did not wake up to the fact that they were not paid enough until New York was advanced to \$5 per day, if I recollect right.

Mr. BOUTELL. I think they were wise to do that, when they found the great increase in the cost of living. I know that is distinctly so in Chicago.

Mr. CLARK. That being the case, since the panic, the cost of living ought to be less than it was before, so why put them up now?

Mr. BOUTELL. I think it would be so short lived that there would not be any advantage if we took into consideration only the panic.

The CHAIRMAN. Do you recollect when the \$4 a day limit was made?

Mr. REYNOLDS. I think it must have been many years ago.

The CHAIRMAN. I think most of these salaries were adjusted along in the sixties when the cost of living was fully as high as to-day.

Mr. COCKRAN. Are these men working a fixed number of hours per day?

Mr. REYNOLDS. The inspector's hours are from sunrise to sunset at every port.

Mr. COCKRAN. The amount of work that they do in New York City is vastly greater in proportion than at any other port, is it not?

Mr. REYNOLDS. They are kept busy all the time, and we really have a smaller force of inspectors there than we ought to have because of the insufficient appropriation.

Mr. COCKRAN. Each inspector does much more, and the work is harder at New York than at any other port.

Mr. REYNOLDS. I think the force of inspectors at all the ports is hard worked.

Mr. CLARK. Mr. Secretary, how does it happen that an inspector at New York City has to travel any more in the discharge of his duties than an inspector at Boston, Philadelphia, St. Louis, San Francisco, Chicago, or any of the other ports?

Mr. REYNOLDS. Because he has two rivers to cover and because ships are coming in there with great frequency so that he has to rush from one dock to another. Take it in the passenger season upon the ocean steamers, the men are busy from early in the morning until late at night. The whole force, in the inspection of baggage upon these large ships, would frequently be worked until 11 or 12 o'clock at night.

Mr. CLARK. If the whole force of inspectors could get to the point where the big ship came in, and work there from sun up to sundown, then they would not travel any more than the inspectors in Boston or San Francisco or Chicago, would they?

Mr. REYNOLDS. No; but they go from dock to dock. We have boats in the morning, boats at noon and boats at night during the passenger season.

Mr. COCKRAN. They have to go from the east side of the East River in Brooklyn over to the west side of the North River at Hoboken, and it is a long distance.

Mr. CLARK. But the same inspectors do not attend to all of those different places?

Mr. REYNOLDS. Not all of them, unless the passenger baggage of one steamer is nearly finished, when in that case we would take the same inspectors and send them to another dock, keeping the force in motion all the time. As you know, the European passengers do not want to wait any longer than is possible in having their baggage attended to.

The CHAIRMAN. The clerk informs me that the pay of inspectors was increased on the 29th day of April, 1864, to \$4 per day, at a time when the cost of living was fully as high, with the greenback dollars, as it is to-day.

Mr. CLARK. A good deal higher.

Mr. COCKRAN. Is there any reason why the officers should be paid any more at the port of New York than elsewhere, excepting the reason based upon the single head of expenses?

Mr. REYNOLDS. That would be all.

Mr. NEEDHAM. Suppose they are all fixed at \$5 a day?

Mr. REYNOLDS. Then New York would demand more money.

Mr. NEEDHAM. As soon as you put New York ahead then the rest of the ports will demand the same.

Mr. REYNOLDS. The Department is of the opinion that the bill which would give the Treasury Department the power to fix \$6 a day everywhere would get away entirely from the element of local legislation; that is, there should be a general bill, which would work out better than having bills for certain localities, causing other localities to come in and ask for the same privileges. The Department would be guided by the amount of work at the different ports and by the expenses incurred; and especially by the appropriation at its disposal.

Mr. BONYNGE. Is it the opinion of the Department that the New York inspector should have more than others?

Mr. REYNOLDS. The New York inspectors are under heavier expense than at the other ports.

Mr. BONYNGE. Then in administering such a law it would be the policy of the Department to give the New York inspector a larger sum?

Mr. REYNOLDS. I think it would.

Mr. LONGWORTH. Then would your idea be to still have a lump sum, and to leave it in the discretion of the Treasury Department?

Mr. REYNOLDS. All of the inspectors are paid out of a lump sum.

Mr. LONGWORTH. Would you still think that best?

Mr. REYNOLDS. I think as conditions would change the Department could change the compensation and the number to receive that compensation.

Mr. CLARK. In the light of experience, if we put this up to \$6 a day now, would they not be back here next year for \$7 a day.

Mr. REYNOLDS. Probably not next year.

Mr. CLARK. The year after then?

Mr. COCKRAN. How long did they remain at \$4 before they made another jump?

Mr. REYNOLDS. Before they made a successful jump it was about forty-five years.

Mr. COCKRAN. I am inclined to think that they do not show any very great avarice.

Mr. CLARK. The amount was put up to \$5 a few years ago.

Mr. BOUTELL. I would like to ask whether those provisions which you speak of, Mr. Secretary, as meeting the approval of the Department, are not covered in Senate bill 4066?

Mr. REYNOLDS. Was that the bill introduced by Senator Hopkins?

Mr. BOUTELL. I think so.

Mr. REYNOLDS. The Department recommended and approved that bill when it was sent down by the committee to the Department.

Mr. GAINES. When these men do work at night at New York are they paid additional?

Mr. REYNOLDS. When they do work at the request of private individuals or a steamship company, they receive extra pay after 6 o'clock.

Mr. COCKRAN. From whom does that come?

Mr. REYNOLDS. From the steamship company or the individual who wishes to have extra help for his own reasons in clearing a vessel or getting certain work out of the way. The money goes into a special fund. That extra pay does not come out of the Government.

The CHAIRMAN. I would like to know what change has been made in the last two years. Two years ago the Department recommended, and the report of the collector of New York recommended, that the pay at New York should be made not to exceed \$5 per day. The committee made an exception of New York City from other ports on the recommendation of the Treasury Department. What need is there now that demands the increase asked for these inspectors, not to \$5 but to \$6, allowing the Department the discretion to pay that sum anywhere in the United States; what new fact?

Mr. REYNOLDS. The Department would like to give some inspectors at New York more than \$5 a day. It would not be in favor of raising the whole grade, of taking every man holding the position of inspector to-day and giving him \$6 a day. We are trying to build up a better force of inspectors in New York than before, because those are the people who do the everyday work.

The CHAIRMAN. If it is put upon the ground of a better force of inspectors and better satisfaction, I will say that that was recommended to the committee before as the reason for bringing this up to the proper amount. I am trying to find out where there is a demand for \$6 a day. The inspectors themselves are only asking for \$5, as I recall the demand.

Mr. CALDERHEAD. I suppose it started from the general increase of wages.

The CHAIRMAN. It was only four years ago.

Mr. REYNOLDS. That is correct.

Mr. DALZELL. I understand, Mr. Secretary, that you do not recommend an increase to cover the entire grade, but only where the Secretary might see fit to reward particularly meritorious officers.

Mr. REYNOLDS. No; I would not be in favor of raising the whole grade of inspectors a dollar a day; no.

Mr. DALZELL. I will read Senate bill 4066 [reads]:

That the Secretary of the Treasury be, and he is hereby, authorized to increase the maximum compensation of inspectors of customs not to exceed \$6 per diem, at the ports of New York, Chicago, Boston, Philadelphia, and San Francisco, and such other ports as he may designate.

The CHAIRMAN. Was not the act that we passed two years ago substantially the same as regards New York?

Mr. REYNOLDS. I think the act you passed, Mr. Payne, had in it that this extra should be in lieu of compensation for expenses. The whole grade receives the same amount.

Mr. COCKRAN. Is that the act you approve, Senate bill 4066?

Mr. REYNOLDS. Yes; it is.

The CHAIRMAN. How many inspectors are there in the United States?

Mr. REYNOLDS. There are 370 in New York City, and there would be perhaps an equal number in the rest of the country. New York does two-thirds of the customs business of the country, and I should say that the inspectors at all of the other ports would amount up to less than an equal amount with New York.

Mr. COCKRAN. That is, New York has more than half of the total number of inspectors in the country?

Mr. REYNOLDS. It does two-thirds of the business.

Mr. COCKRAN. If they do two-thirds of the business with half the force, how can you say that they are all worked about alike?

Mr. REYNOLDS. Because in many small ports we have to have inspectors anyway.

Mr. COCKRAN. Do they do the same amount of work?

Mr. REYNOLDS. Not at the small ports scattered through the northern part of New York and New England.

Mr. CLARK. They are not getting the same pay either, are they?

Mr. REYNOLDS. No.

Mr. LONGWORTH. Isn't it a fact that a great many of these inspectors make a very large amount above their salaries?

Mr. REYNOLDS. They do, on extra work.

Mr. LONGWORTH. But not only on extra work?

Mr. GAINES. Do they take tips?

Mr. REYNOLDS. They only take them once if we find it out.

Mr. COCKRAN. They are liable to prosecution for that.

Mr. REYNOLDS. To dismissal from the service and to prosecution.

Mr. RANDELL. If they are permitted to take extra work outside of working hours, do they not take advantage of that, too; in other words, does not the extra work encourage them not to do their own work in the proper time, so that it may run over?

Mr. REYNOLDS. The extra work is done outside, and is for a steamship company or some individual who wants it done.

Mr. BONYNGE. Who is the money paid to?

Mr. REYNOLDS. The collector assigns the men. The steamship company or individual who wishes the extra work done pays the money to the collector, and it goes into a special-deposit account. The collector pays it to the man himself, so that it does not go directly from the corporation or individual to the inspector. In the work of the inspector this does not apply to steamship inspection of baggage at night. They have to do that work without extra compensation; it is lading and unlading of vessels that brings extra compensation.

The CHAIRMAN. You may proceed in regard to these other bills.

Mr. REYNOLDS. There is a bill to increase the salary of night inspectors from \$3 to \$4 a day. That, in the opinion of the Department, is one of the least necessary of these bills. A night inspector is not what his name implies. The name is a misnomer, for he is not

by law allowed to inspect a cargo or assist in lading or unlading. He is merely a watchman or a policeman, and \$3 a day, which he receives at the present time, seems to be fair compensation for his service.

Mr. DALZELL. Mr. Secretary, the inspector who does work at night at the expense of the steamship company or the individual receives pay for it?

Mr. REYNOLDS. He receives a day's extra pay if the service is performed before midnight, which is a double day's pay up to midnight.

Mr. DALZELL. Are there not others employed outside of inspectors who do extra work and receive nothing for it?

Mr. REYNOLDS. They can not receive a cent under the law. I think there is a bill before your committee to change that and give all customs people who do extra work on the initiative of people outside extra compensation, which bill the Department thoroughly approves.

Mr. DALZELL. It puts the others on the same basis.

Mr. REYNOLDS. Yes; all customs employees.

The CHAIRMAN. I have here the statute passed in 1902. It reads:

That the Secretary of the Treasury is hereby authorized to increase the compensation of inspectors of customs at the port of New York as he may think advisable and proper by adding to their present compensation a sum not to exceed \$1 per day, which additional compensation shall be for work now performed by them at unusual hours for which no compensation is now allowed, and shall include work performed by said inspectors at night in examining passengers' baggage, and also as reimbursement for expenses incurred by them for meals and transportation while in the discharge or performance of their official duties.

Do you say that under that act the pay went up \$1 a day?

Mr. REYNOLDS. The Secretary thought it desirable to increase the salaries of all New York inspectors under that act.

The CHAIRMAN. And that is exactly what the Secretary would probably do in a short while if we passed an act increasing it \$2, if he thought it "advisable."

Mr. REYNOLDS. He would not if the present appropriation was made, and if appropriations stay where they are.

Mr. COCKRAN. But that is exactly what they do not do.

The CHAIRMAN. I am referring to the singling out of some meritorious man. The same idea was advanced then, as I recall it, the idea of singling out meritorious men, and yet they were all raised.

Mr. REYNOLDS. I think the Secretary went on the principle that there was extra expense connected with their service in New York. The great trouble with the inspectors in New York is that they are compelled to have their homes great distances from the places of performing their service, and it costs them a good deal to get back and forth.

Mr. COCKRAN. Is the pay of the laborer fixed by statute?

Mr. REYNOLDS. No, it is not, excepting as we get an idea of what Congress means in connection with his pay by the amount fixed for labor at the different departments in the city, which is a specific appropriation for a specific number of laborers at specific compensation, and is carried in the legislative and executive bill.

Mr. COCKRAN. You do not allow for \$840 per year?

Mr. REYNOLDS. No, \$770.

Mr. COCKRAN. Suppose you allowed \$840; how much would that increase the appropriation?

Mr. REYNOLDS. We have 1,000 laborers at the port of New York.

Mr. COCKRAN. And to increase them to \$840 would amount to about \$70,000.

Mr. REYNOLDS. Yes, roughly.

Mr. NEEDHAM. What about the weighers and assistant weighers?

Mr. REYNOLDS. They come under a different classification.

Mr. COCKRAN. I have letters from them; what are they paid?

Mr. REYNOLDS. I think you refer to assistant weighers.

Mr. COCKRAN. What do the assistant weighers receive?

Mr. REYNOLDS. They receive \$4 a day.

Mr. NEEDHAM. Is that uniform?

Mr. REYNOLDS. I think that is only at New York.

Mr. NEEDHAM. Then, as a matter of fact, New York gets about 25 per cent more than any other port.

The CHAIRMAN. In what way?

Mr. NEEDHAM. In compensation.

The CHAIRMAN. But the percentage of cost of collection is away down as compared with the other ports.

Mr. REYNOLDS. Very much less. It costs less than 2 cents to collect a dollar at New York, and it costs about 2.9 cents to collect a dollar when you take into consideration all the ports of the country.

Mr. BOUTELL. But that of course would not affect the wages of laborers.

Mr. FORDNEY. But it might have something to do as showing how much work was being done by those men.

Mr. REYNOLDS. Now, grouping these into classes where they naturally belong, there is the laborer's compensation, which the Department feels should be increased if it is possible. This extra amount, if it could be given him, would mean enough extra to him in taking care of himself and family to make it well worth the while of Congress. And it is believed that as to the people at the top, such as examiners, the Department should have authority to give them more than \$2,500 a year, as they have to pass upon every kind of merchandise that comes into this country. That, I think you will find in the bill introduced by Mr. Sherman. It takes in assistant appraisers of merchandise, examiners, deputy collectors, deputy naval officers, deputy surveyors; and also has in it a proposition to change the method of appointment of certain Presidential officers, putting them under the Treasury Department in that respect.

Mr. GAINES. What is the difference between an appraiser and an examiner?

Mr. REYNOLDS. The appraiser is in charge of the whole appraising department in New York, under which he has twelve assistant appraisers, each of whom has charge of a floor and the different kinds of merchandise are gathered together under classification as nearly as possible, so that there will be twelve classes. Each assistant has a class under him, and under each appraiser are examiners for each kind of merchandise that comes up.

Mr. CLARK. Is one of these examiners supposed to know how to examine every species of merchandise that comes in, or is it done by specialists?

Mr. REYNOLDS. We have many examiners who handle different grades, and some who handle as few as possible, they being specialists in those.

Mr. COCKRAN. What are they paid now?

Mr. REYNOLDS. \$2,500 under the law.

Mr. COCKRAN. And the Sherman bill increases it to \$4,000?

Mr. REYNOLDS. At the discretion of the Secretary, which would mean certain examiners.

Mr. COCKRAN. You approve that?

Mr. REYNOLDS. We do, outside of the feature which says that the appointment of the assistant appraisers and certain other officers shall be taken from the President and put in the hands of the Secretary of the Treasury.

Mr. COCKRAN. You do not express any opinion upon that?

Mr. REYNOLDS. That is a matter for the President to decide, and not the Department.

Mr. COCKRAN. But in other respects, the persons covered by Mr. Sherman's bill you approve—there are two bills, are there not?

Mr. REYNOLDS. One is the bill raising the salaries of the general appraisers.

Mr. COCKRAN. You approve of the bill which increases the salaries of the assistant appraisers?

Mr. REYNOLDS. We approve of everything in that bill, excepting the taking of the appointment out of the hands of the President.

Mr. COCKRAN. Now, to make this clear; the deputy collector gets what now?

Mr. REYNOLDS. \$3,000.

Mr. COCKRAN. And that would be increased to possibly \$4,000. What do the deputy naval officers receive?

Mr. REYNOLDS. \$2,500.

Mr. COCKRAN. And the deputy surveyors?

Mr. REYNOLDS. \$2,500.

Mr. COCKRAN. And the assistant appraisers?

Mr. REYNOLDS. \$3,000. Two of them, however, receive \$3,500 a year, and are called special assistant appraisers. That was done under the bill passed by Congress last year.

Mr. COCKRAN. But this seems to be an irregular method of increase; it is not a proportionate increase all around, but an arbitrary increase to \$4,000.

Mr. REYNOLDS. Fixing an arbitrary limit; yes.

Mr. COCKRAN. What do the examiners of merchandise receive?

Mr. REYNOLDS. Up to \$2,500.

Mr. COCKRAN. Deputy naval officers are paid the same, and the deputy collector receives how much?

Mr. REYNOLDS. Three thousand dollars.

Mr. COCKRAN. And the assistant appraisers at \$3,000, excepting two, who receive \$3,500?

Mr. REYNOLDS. Yes.

Mr. COCKRAN. And the examiners of merchandise receive up to \$2,500?

Mr. REYNOLDS. At the port of New York. The law says that they shall not receive more than \$2,500 at New York, but says nothing as to anywhere else.

Mr. COCKRAN. How about the examiner of tea?

Mr. REYNOLDS. That salary is fixed.

Mr. COCKRAN. Then you approve of this bill that I have reference to excepting the change in method of appointment that you have referred to?

Mr. REYNOLDS. Yes.

Mr. COCKRAN. Do you approve of the bill increasing the pay of laborers?

Mr. REYNOLDS. We do. The Department approves of the increased compensation to laborers, and is in favor of the bill giving the Secretary power to increase the compensation of inspectors, and making it a general bill rather than a special one in any way. The Department thinks that the bill increasing the compensation of night inspectors can wait.

Mr. COCKRAN. That is the Bennet bill. What do the assistant appraisers receive now?

Mr. REYNOLDS. Three thousand dollars. As to the bill increasing the salaries of assistant appraisers and gaugers, who now receive \$4 a day, it seems to the Department to be a fair compensation, unless you make a general increase. As I said before, the Department is in favor of any increased compensation in the customs service that you wish to make, and only wishes to differentiate as to bills affecting certain offices which it thinks should be passed above the others, but it is opposed to none.

The bill increasing the salary of watchmen is also a measure which is not necessary to be acted upon, because the Department has it in its power to increase the pay now; excepting that it would give the Department an idea of what Congress wants done by passing a bill authorizing the increased compensation.

The CHAIRMAN. That could be done by increasing the appropriation, could it not?

Mr. REYNOLDS. Yes, it could.

Mr. COCKRAN. How much do they get now?

Mr. REYNOLDS. Eight hundred and forty dollars. There is a bill increasing them to not exceeding \$1,000.

This brings us down to the general appraisers, and the Department is in favor of the bill increasing the salary of the general appraisers, providing for their tenure of office, and also for the retirement feature. The Department approves the entire bill introduced by Mr. Sherman in connection with the Board of General Appraisers.

Mr. COCKRAN. How much do they receive now?

Mr. REYNOLDS. Seven thousand dollars.

The CHAIRMAN. Then the Department is for the bill as presented to the committee?

Mr. REYNOLDS. It is, with those three elements in it—the increase, providing for their tenure of office, and retirement for disability. The bill provides that the salary shall be increased to \$10,000, and makes clear what their tenure of office shall be, and the method of retirement for disability on half pay.

Mr. COCKRAN. Do you mean that he is retired, no matter how long he has served?

Mr. REYNOLDS. I think that is correct.

Mr. COCKRAN. Then he could be retired two days after his appointment.

Mr. FISCHER. The President can retire him.

Mr. COCKRAN. Oh, it is in the discretion of the President?

Mr. FISCHER. Yes.

The CHAIRMAN. There is a query here as to whether that would meet the approval of the Board of General Appraisers.

Mr. DE VRIES. We confess ourselves ready to speak on that point; there is no doubt about our approval of that.

Mr. REYNOLDS. Now, I think that takes up most of the bills grouped together in the bundle that was sent down. There are certain local bills making the salaries of deputy surveyors equal to that of deputy collectors, and certain features of that kind. The Department does not believe that deputy surveyors should get the same salary as deputy collectors, and it believes that that is a matter that should be handled by the Department anyway. The office of deputy surveyor is not as important as that of deputy collector; there is not as much responsibility in it.

The CHAIRMAN. We have a bill increasing the salaries of deputy collectors, deputy surveyors, and deputy naval officers.

Mr. REYNOLDS. That, I think, is included in Mr. Sherman's bill, giving the Secretary power to increase the salaries of deputy collectors, deputy surveyors, and deputy naval officers, assistant appraisers and examiners, all up to \$4,000. It would cover all of those different features.

The CHAIRMAN. Have you covered all of the bills relating to the customs service?

Mr. REYNOLDS. I think I have covered them in groups. They resolve themselves into laborers, night inspectors, day inspectors, assistant weighers and gaugers, deputy collectors, deputy surveyors, deputy naval officers, assistant appraisers, and examiners. I think that is all of the grades.

Mr. LONGWORTH. I notice that this letter from the Secretary in regard to the examiners simply states that the Department sees no objection to that. Is there approval also to that particular clause—I think it is in the Hopkins bill. It simply says that the bill has been referred to the Department and that the Department sees no objection to it, but does not say that it approves it.

Mr. REYNOLDS. That is one way of expressing our approval.

Mr. LONGWORTH. That is your usual method?

Mr. CLARK. If he really approves the bill why does he not say so instead of leaving it in that equivocal situation?

Mr. REYNOLDS. If we have objection we state it, and if we are opposed we say that we can not recommend it.

Mr. CLARK. But if you do not say you are opposed to it, then you are for it?

Mr. REYNOLDS. If we have no objection to it, we leave it to the wisdom of the committee to decide it.

The CHAIRMAN. Now, as to the bills in regard to the internal-revenue service—

Mr. REYNOLDS. That does not come under me. I will have some one come up on Monday, if you wish, to take those bills up with you.

The CHAIRMAN. This hearing will be closed to-day at 12 o'clock and will not be resumed until Monday morning, so I would suggest that gentlemen out of town be heard now.

Mr. ROBERTS. If the chairman will permit me, Captain Battelle, representing the inspectors at the port of Boston, is here, and is thoroughly familiar with all of the facts in connection with their case, and can present them much better than I can. I would like to ask Captain Battelle to state to the committee the reasons why he favors Senate bill 4066, increasing the compensation at the discretion of the Secretary of the Treasury of all the inspectors throughout the country to a maximum of \$6.

STATEMENT OF MR. CHARLES P. BATTELLE, OF BOSTON, MASS.

Mr. BATTELLE. Mr. Chairman and gentlemen, I have brought with me a statement of facts that I have prepared as relating to Senate bill 4066, passed by the Senate and referred to this committee. I do not believe that I could present my case to you in any better way than by reading the statement of facts which I have already prepared.

The CHAIRMAN. That bill raises the pay of inspectors to an amount not exceeding \$6 a day in all portions of the country?

Mr. BATTELLE. That is the bill; yes, sir.

I wish to state that these facts that I present to you apply to Boston only; that I speak only for Boston. [Reads:]

[Facts relating to matter of S. 4066, passed Senate February 11, 1908, of the Sixtieth Congress, now in Committee of Ways and Means, House of Representatives, for regulation of compensation of inspectors of customs.]

The maximum salary of inspectors in 1864 was \$3 per diem. In 1864 inspectors were allowed an increase of \$1 per diem, to be applied by the Secretary of the Treasury at his discretion. Under said act the increase was granted at the ports of Boston and New York. For about thirty years no other ports received the maximum compensation, but within the past twelve years the increase has been granted at other ports.

The inspectors at the port of Boston ask the serious consideration of your committee to the conditions at the present time as against the conditions in 1864 as affecting our petition for a permissive bill allowing an increase per diem to be applied at the discretion of the Secretary of the Treasury when and where the conditions prove conclusively the justice of said increase. In our country the inspectors of customs' particular field of activity has progressed by leaps and bounds until to-day our import and export trade is one of the marvels of the world's history. Ninety per cent of this great traffic comes to and passes through a few great commercial centers. While the work of the inspector in the greater number of ports is practically the same to-day as it was forty years ago, the method of doing work at a few important centers of activity, notably Boston and New York, has been constantly changing to meet changing conditions, and in the process of evolution are to-day completely revolutionized. Forty years ago an inspector stood at the hatchway of a ship, and at the side of a truck, and personally checked every package of foreign merchandise coming to or going through the port of Boston. The work required 112 inspectors. To do the work in that way to-day would require, at a conservative estimate, at least 300 on account of change from sailing vessels to steamships working from 7 to 10 hatches instead of 1 hatch on sailing vessel.

The number of inspectors has been gradually decreased until to-day 77 inspectors do the work to the satisfaction of the collector, the surveyor, and also of the special agents of the Secretary of the Treasury, who make frequent investigations and examinations of both men and methods.

Upon special act of December 16, 1902 (Stat. L., 32, sec. 753), the inspectors of the port of New York had \$1 per day added to their compensation, while the port of Boston, doing business under exactly the same conditions, with the same percentage of work and business as compared with the number of inspectors employed, have remained at the same rate of compensation. The proposed bill will allow the Secretary of the Treasury to increase the compensation of inspectors at any port when the increase of business which calls for work at usual and unusual hours may seem to him equitable and justifiable. This bill changes no law other than an extension of the permissive law of 1864, now in force, and is not special legislation in any form or nature. The business of the customs districts has increased enormously, in many instances 300 per cent, and new lines of business have also been established. To illustrate, "immediate transportation," or transportation of dutiable merchandise from seaports to inland ports, without appraisement, which requires the personal supervision of inspectors, has increased in volume 30 per cent per year for several years.

Exports from seaports to Canada—practically unknown forty years ago—are now one of the principal parts of the district inspector's duties, and in conjunction with immediate transportation, export and drawback business requires at least the services of one-fifth of the inspectors of seaport districts. Passenger arrivals require special services of every inspector at all hours, day or night, without extra compensation, and during the past twenty-five years the number of arrivals have increased over 300 per cent, the years 1905, 1906, and 1907 having the largest number of arrivals ever known. In Boston forty years ago there were 112 inspectors, whose average working hours were

about seven and one-half hours per day. At the present time Boston has 77 inspectors, who are required, owing to the increase of business that requires personal supervision and the large number of passenger arrivals, to not only work from sunrise to sunset, but very often until midnight, thereby causing increased expense for meals and hotel to the inspectors.

The inspector has ceased to be simply on the plane of an ordinary checking clerk, and has become skillful and expert in supervising and superintending the work of the many steamship and railroad agents, clerks, stevedores, truckmen, lightermen, merchant importers and exporters, and all others who come in close contact with this great and growing and changing commercial activity; also expert in examining the books of the various steamship and railroad companies; expert readers of human nature, acquired by experience in examining the baggage of thousands of tourists and emigrants, with a twofold object always in view, to safeguard the legal lien demanded by the Government and to prevent undue and unnecessary obstructions to this great channel of trade.

That the inspectors have successfully met this constant process of evolution with so little friction and such apparent satisfaction is in itself a tribute to their intelligence, activity, and practical common sense and versatility. Devoted to their work, they have willingly and successfully coached and tutored the new members of the force. Our cause is just; our request modest, moderate, and worthy of your consideration and approval. The consideration of the baggage question, with its work at usual hours, the demands of the traveling public constantly increasing, would alone entitle us to a favorable consideration of our bill at your hands. And when considered with the increased cost in mode of living, education of children, and position to be maintained in society, we fail to understand what opposition should arise to a permissive measure controlled by the Secretary of the Treasury, and which can not be operative until warranted by the business of the ports.

FACTS REGARDING INSPECTORS AT PORT OF BOSTON.

The act approved December 16, 1902, allows inspectors at New York \$5 per day. Inspectors at Boston receive \$4 per day, a discrimination under law of \$1 a day in favor of New York without just cause, as same conditions exist at Boston as at New York.

Conditions.—On duty every day in the year, including Sundays and holidays, from the rising to the setting of the sun, subject to call after sunset to examine baggage of passengers on incoming steamers until midnight without extra compensation.

A FEW STATISTICS.

Twenty years ago there were 85 inspectors at port of Boston at \$4 per day. At present time there are only 77 inspectors at port of Boston at \$4 per day.

During the past twenty years imports have increased 100 per cent.

During the past twenty years exports have increased sevenfold.

During the past twenty years the passenger arrivals have increased at least 300 per cent.

Under present conditions 77 inspectors are required to personally supervise, with more work, longer hours, and greater responsibilities, in the aggregate at least three or four times the amount of work performed by 85 inspectors twenty years ago.

CHARLES P. BATTELLE,
Chairman of Committee.

Those are the facts as I present them, as shown at the port of Boston. I do not know that I can add anything to that unless you desire to ask me some questions.

The CHAIRMAN. You spoke about night work in your statement. They get extra pay for that?

Mr. BATTELLE. Not in anything I have referred to we do not.

The CHAIRMAN. You spoke about men working until midnight.

Mr. BATTELLE. That is on examination of baggage, for which no compensation is allowed.

The CHAIRMAN. It is only allowed on the cargoes?

Mr. BATTELLE. Only on the cargoes.

Mr. COCKRAN. Is that equally so in New York City?

Mr. BATTELLE. Yes, sir.

Mr. BOUTELL. This same general principle that you allude to applies equally to the ports of Philadelphia, Chicago, San Francisco, and others?

Mr. BATTELLE. Yes, all seaports; and the railroads are at the present time acting as common carriers, who handle all of our transportation of merchandise that would go to all of the inland ports.

STATEMENT OF HON. MARION DE VRIES, PRESIDENT OF THE BOARD OF GENERAL APPRAISERS, NEW YORK CITY.

Mr. DE VRIES. I would like to say a few words, Mr. Chairman, in support of House bill 17506, which refers to and concerns the Board of General Appraisers. I prepared a statement some time since in the form to be submitted to your members individually, supporting the increase of salary to the members of the Board of General Appraisers, and I will submit those matters to the committee and say, in addition, what I desire to particularly impress upon the committee.

The Board of United States General Appraisers was created by the act of June 10, 1890, known as the customs administrative act, which defined the jurisdiction of the Board to hear and determine all cases involving market value and classification of merchandise arising out of the collection of the customs revenues.

The bill creating the Board, as passed by the Senate, where the legislation originated, provided a salary of \$10,000 per annum for each of the General Appraisers. This was reduced by the House to \$5,000 per annum, and in conference and as ultimately passed made \$7,000 per annum.

The law provides that the principal office of the Board, and therefore place of residence of its members, shall be in the city of New York, and further provides that no member of the Board shall be engaged in any other trade, business, or avocation. These requirements deprive its members of any other means of livelihood, and fix their place of living and consequent expenditure in New York city, where the cost of living is much higher than in any other city in the Union.

Since the organization of the Board the work performed by its members has more than doubled, and the cost of living increased by at least 40 per cent. Witness these facts:

From 1890 to 1895 the number of classification cases received by the Board ran from 21,000 to 29,000, in round numbers, and those decided by it from 12,000 to 17,000. During the years 1905, 1906, and 1907 the number of classification cases received by the Board ran from 39,000 to 58,000, and the number decided from 33,000 to 80,000.

During the fiscal year of 1906-7, ending June 30, 1907, the Board received in classification cases 58,443, and decided 80,765.

When the Board was created it found upon its files transferred to its jurisdiction almost 270,000 classification cases, which have been reduced to 39,307 at the close of the last fiscal year, and the Board was at that time up to current work, it being understood that the cases undecided were upon the so-called "suspended files," awaiting decision of the issues involved by the courts, and could not be decided by the Board until those issues were first determined by the courts.

Upon the reappraisement side the number of cases received by the Board from 1891 to 1895 was from 2,000 to 3,600, and the number

decided from 2,000 to 3,200; whilst in the years 1904, 1905, and 1906 the number received ran from 4,200 to 5,600, and the number decided from 4,300 to 5,600, in round numbers. In this branch also the Board is at the present up to current work.

While the Board was confronted on organization with the vast accumulation of cases mentioned, it has decided all of them in so far as possible under the law, and to-day is meeting the current work with great dispatch.

That the cost of living has greatly increased, particularly in New York City, so as to be conservatively estimated at 40 per cent, is within the cognizance of everyone familiar with the trend of prices in this country.

The members of the Board of General Appraisers receive a salary of \$7,000 per annum, as stated, and pass upon the actions, among others, of the collector of customs at the port of New York, who receives a salary of \$12,000 per annum, while the surveyor, the naval officer, and the appraiser at that port each receive a salary of \$8,000 per annum. The postmaster at New York City receives a salary of \$10,000 per annum, and the United States attorney the same. No one of these officials is prohibited by law from engaging in any other business.

The higher and increasing cost of living in New York City is expressly recognized by the law constituting the supreme court of New York, which court has 26 judges in the boroughs of Manhattan and the Bronx. The salary of these judges is \$17,500 per year in the city, whilst elsewhere in the State they receive a salary of \$7,500 per annum.

The number of district municipal judges in New York City was increased January 1, 1908, from 13 to 42, and their salaries raised from \$6,000 to \$8,000 per annum.

The judges of the city court of New York, whose number has just been increased from seven to ten, received at the same time an increase in salary from \$10,000 to \$12,000 per annum.

The two surrogate judges of New York City receive \$15,000 per year.

The judges of the court of general sessions of that city, five in number, have just been increased in salary from \$12,000 to \$15,000 per year.

The judges of the court of special sessions in New York City, six in number, receive a salary of \$9,000 per year.

The duties of the members of the Board of General Appraisers are equally responsible and the labors as multifarious and burdensome as those imposed upon the judges of any one of these courts, and requires as high a degree of legal training. In addition to the duties cast upon the members of the Board at their office in New York, they are subject to assignment and are assigned to different ports throughout the country to hear regular calendars. They also sit as referees of the United States circuit courts in all customs cases on appeal. Moreover, they are constantly having sessions, while with the courts' terms vacations intervene.

The increase of the salary of the members of the Board was recommended by the last preceding Secretary of the Treasury in a letter communicated to the Senate and House Committees on Appropriations to be at least \$10,000 per annum, and, as you have just

heard, this bill is fully recommended by the present Secretary of the Treasury.

In view of the fact that the Board is performing over twice, in fact three times, the work when organized, that the increase in the cost of living has reduced the purchasing power of the salary of its members at least 40 per cent, and that they are paid much less than the State and city officers in the same city for similar duties, it would seem but just that their salaries should be increased to at least \$10,000 per annum, the figure originally fixed by the Senate.

The jurisdiction of the State courts just mentioned embraces every class of cases from that of municipal cognizance to that of highest State jurisdiction. The jurisdiction of the Board of General Appraisers is national. In no case is any judge of the former in New York City paid so small a salary as the latter.

The Board annually pass in the first instance upon all cases arising under the customs law in the entry of \$1,500,000,000 of imported goods, paying last year over \$330,000,000 revenues. Many cases before them involve hundreds of thousands of dollars directly besides the settlement of the principle involved. Their findings of fact are often conclusive and in many cases absolutely so. We feel that officials performing these important duties of national importance are entitled to at least the same or better compensation allowed officials whose highest function is municipal, the dignity and legal acumen of which under the law can be no greater than to determine whether or not a person was or was not intoxicated the day before or whether or not the penalty of a particular street brawl should be visited upon Smith or Jones.

These facts underlie all the other provisions of this bill, the first of which is that members of the Board of General Appraisers may be removed by the President only upon cause specified and after an investigation. You will remember that section 12 of the customs administrative act, which provides for the tenure of office for members of the Board of General Appraisers, originally provided that they might be removed by the President for malfeasance in office, neglect of duty, and incompetency. On a case being taken to the Supreme Court of the United States it was held by that court that those reasons were not controlling; in other words, that the specification of cause in the statute was not binding upon the President, and he could, without any assigned reason, and for reasons beyond those expressed in the statute, remove a member of the Board of General Appraisers; so that to-day this Board stands in the position that its members can be removed at any time at the will of the President without any cause assigned or charges preferred.

MR. CLARK. Can you not conceive of one of these appraisers being incompetent in such a way that the President nor anybody else could file specific charges against him and substantiate them?

MR. DE VRIES. I can not conceive of such a person being appointed in the first instance upon the Board.

MR. CLARK. You can never tell who will be appointed.

MR. COCKRAN. If you could get over that exception, then could you conceive of such a case?

MR. DE VRIES. I do not see how it could occur any more than in the appointment of a judge on any circuit or district bench of the United States, for the cases are almost parallel. We have the same

jurisdiction in our classes of cases as the circuit judges of the United States and the judges of the circuit court of appeals in such cases. Appeals from our Board go to the United States circuit court for review, and thence to the circuit court of appeals, and are then permissive to the United States Supreme Court. We are, in other words, in classification cases the court of first trial.

Mr. CLARK. To begin at the beginning, the President is responsible for the administration of the customs laws, and if he inadvertently got hold of an appraiser who was practically worthless, under this law he could not get him out unless he could file specific charges against him and substantiate them.

Mr. DE VRIES. Yes; if he were perfectly worthless he would then, under this bill, in the course of the administration of the office, be found guilty of either malfeasance in office, neglect of duty, or inefficiency, which are prescribed in this bill and the statute existing, and if found guilty upon any one of those charges he could be removed.

Mr. COCKRAN. By whom?

Mr. DE VRIES. By the President.

Mr. COCKRAN. Not by the Secretary of the Treasury?

Mr. DE VRIES. No, sir; he is appointed by the President and removable by the President alone.

Mr. COCKRAN. The President would have to give him a trial.

Mr. DE VRIES. He would state reasons and prefer charges against him. There would be no trial excepting in the direction of the President.

Mr. COCKRAN. The President would have the absolute right of removal under this act by simply assigning the reasons?

Mr. DE VRIES. Exactly.

Mr. CLARK. By simply stating the reasons?

Mr. DE VRIES. Yes, sir; after a hearing before himself. In other words, Mr. Clark, it simply changes this from a body which is subject to removal for political reasons to a body which could be removed only for reasons which would lie in the inability of a member to perform his duties and the other causes prescribed by statute.

Mr. CLARK. The theory that you advocate here now as to these general appraisers is the same identical theory that certain statesmen advocated in the beginning of things under the Constitution, but it was contended that if the President could never get rid of an appointee without giving his reasons to the Senate for removing him that that would absolutely work demoralization in any government under heaven.

Mr. COCKRAN. Does this bill provide that the reasons shall be assigned to the Senate?

Mr. DE VRIES. No; the President is the sole judge, and he must specify the charges against the member, or somebody else can specify the charges, which is more likely to occur—and that would naturally be the case in a board of this kind where there is the pressure of the manufacturers on one side and the importers upon the other and important issues to be decided every day.

Mr. COCKRAN. To whom does the President assign his reasons; to what officer or body?

Mr. DE VRIES. Naturally the President would never prefer charges against a member of the Board. If charges were preferred on the part of the Government, they would be preferred by the Secretary of

the Treasury, but if on the part of some individual they would come from the individual. There would be a hearing before the President upon those charges, and if he sustained them the member would be removed.

The CHAIRMAN. Your idea is that under the original law, giving the grounds upon which these officers could be removed, it was the intention of Congress to define the cause of removal.

Mr. DE VRIES. It was.

The CHAIRMAN. But the Supreme Court held that there might be other reasons where they could be removed, not enumerated by Congress.

Mr. DE VRIES. The word "only" was not in the statute, and it was held not conclusive of causes.

The CHAIRMAN. This is simply to restore the law to the original signification intended.

Mr. DE VRIES. Yes; what Congress intended. It had been the usual construction of statutes that where reasons are enumerated the removing power could not go beyond those reasons, but the Supreme Court held to the contrary in this particular case. In this bill we are asking only to be restored to the status originally intended by Congress.

Mr. COCKRAN. I would like to ask Mr. Reynolds one question regarding the work of these inspectors. I understood you to say, Mr. Reynolds, that you pay for overtime. It seems that they are not paid for examination of passengers' baggage.

Mr. REYNOLDS. They are not paid for examination of passengers' baggage.

Mr. COCKRAN. They get no compensation for that?

Mr. REYNOLDS. No.

Mr. COCKRAN. Then this \$6 a day that is asked for would cover their compensation whether they worked nights or not.

Mr. REYNOLDS. \$5 a day; yes, sir.

Adjourned at 12 o'clock noon until Monday, March 9, at 10.30 a. m.

MONDAY, *March 9, 1908.*

MORNING SESSION.

The committee met at 10.30 a. m., with Hon. Sereno E. Payne in the chair.

Present: The chairman, and Messrs. Dalzell, McCall, Boutell, Needham, Calderhead, Gaines, Bonyngé, Longworth, Clark, Cockran, Underwood, and Randell.

The CHAIRMAN. We will hear Colonel Fowler, the collector of customs of New York.

STATEMENT OF HON. EDWARD S. FOWLER, COLLECTOR OF CUSTOMS, NEW YORK, N. Y.

Mr. FOWLER. Mr. Chairman and gentlemen of the Committee, it is an honor that I appreciate very deeply to be invited to appear before you and say what I may with regard to questions that have been submitted to me for an expression of my views. Some weeks ago

when in this city I received permission from the Treasury Department to confer with the chairman of your honorable committee in regard to the questions. The chairman stated that he would send the bills that were pending before the committee to me for an expression of my views. He did so. I examined the bills carefully and submitted my report to the Treasury Department, and have since received the permission of the Department to present that report here with the Department's approval.

I will take the bills up in their order. I will begin first with H. R. 11709, introduced by Mr. Sherman January 6, 1908, which provides in explicit terms:

That hereafter, deputy collectors, deputy naval officers and deputy surveyors of customs, assistant appraisers and examiners of merchandise, examiners of tea, and examiners and special examiners of drugs shall be appointed by the Secretary of the Treasury on the nomination of the principal customs officers in their respective districts; and he is hereby authorized and directed to fix the compensation of each in such an amount as he shall deem proper, not exceeding four thousand dollars per annum.

The bill further provides:

That all laws and parts of laws inconsistent with this act are hereby repealed.

It is thereby made clear that the bill in question is in no sense a local bill, but is, on the other hand, a general bill, vesting with the Secretary of the Treasury authority to grade the salaries of the officers therein named and to fix their compensation in such sums as he shall deem proper, not exceeding the limit of \$4,000 each. No injustice can be done to any customs district by the terms of this bill, for the services of the officers named in some districts are possibly of not so great importance to the revenue as to command the highest grade of compensation, and the Secretary of the Treasury is thereby empowered to mete even justice in fixing such compensation at such figures with due regard to the interests of the revenue and with full fairness to the individual officers thereby affected. So much for the general provisions of the bill.

At the port of New York, in the district of New York, the compensation paid to deputy collectors, deputy surveyors, and deputy naval officers of customs, and assistant appraisers of merchandise stands to-day at the same figure at which it was fixed more than forty years ago. No increase of their compensation whatever has been provided during all that time; but, on the other hand, there has been great increase in the duties required to be performed by them, while the cost and expense of their living is at least one-third more, if not double, what it was at the time that the compensation was in the first instance fixed by legislative enactment.

I can not commend too strongly the favorable consideration by the committee of the provisions of this bill, for it will be observed that by its terms the Treasury Department has absolute control of the question and can fix the salaries at such figure as the appropriations will justify.

Attention is respectfully invited to the fact that the only offices named in the bill in question falling within the class known as Presidential offices are those of assistant appraisers, and in some instances examiner and special examiner of drugs.

With regard to the assistant appraisers, attention is again respectfully invited to the fact that the organic act creating the office of

assistant appraiser at the port of New York (July 27, 1866) provided in specific terms that the assistant appraisers therein provided for should be appointed in the same manner as deputy collectors; that is to say, they were to be appointed by the Secretary of the Treasury on the nomination of the appraiser. The act did not specify that they should be appointed by the President by and with the advice and consent of the Senate, but left their selection to be determined by the Secretary of the Treasury, which was deemed to be for the best interests of the revenue.

Now, gentlemen, I would like to invite attention to the provision of that act which required that the assistant appraisers who were to be selected and nominated by the appraiser and appointed by the Secretary of the Treasury should possess qualifications for the duties which they were to perform. I would like to cite the second section of that act. It reads:

That in lieu of the assistant appraisers now authorized by law for the port of New York, the Secretary of the Treasury may appoint not exceeding ten assistant appraisers for said port who have had experience as appraisers, or who shall be practically acquainted with the quality and value of some one or more of the articles of importation subject to appraisement, and included among the goods, wares, or merchandise to the examination and appraisement of which they are respectively to be assigned.

This law remained in force until the revision of the statutes in 1878, when by omission that provision of law providing for the special qualifications of assistant appraisers and also the manner of their appointment, as stated, was omitted, while the office itself, the salary attached thereto, and the oath of office remained intact. It was then decided by the Department, the manner of appointing having been omitted from the revised edition of the statutes, that the office could only be filled by the appointment of the President by and with the advice and consent of the Senate, and such course was adopted and has remained in force to the present time.

I have no purpose to question the President's right to appoint any officer that he sees fit, nor do I wish to stand in the position of seeking to take from the President appointments which he has at his disposal. I am simply speaking, gentlemen, as a practical man, with practical experience, from a practical standpoint. I entered the appraiser's department as law clerk years ago, served as assistant appraiser, retired from the service, engaged in the practice of revenue cases, and then went back as appraiser of the port of New York after a lapse of twenty years, and I think I know something about the appraisement of merchandise.

There is no reason that I have ever been able to discover why assistant appraisers should be selected as Presidential officers. Their official status is similar in every respect to that of deputy collectors, while their duties are that of appraising officers, subject in their action on appraisements to the supervision, modification, changes, if necessary, and, above all, subject to the approval by the appraiser of the port. Thus it is seen that the operation of the law contemplated that their duties should be on the same plane with deputy collectors, deputy surveyors, and deputy naval officers of customs, whose appointments are wisely made by the Secretary of the Treasury on the nomination of the chief customs officers of the department of customs, to which they properly belong.

Now, with regard to examiners and special examiners of drugs: Their appointments in some instances are made by the President,

by and with the advice and consent of the Senate, because of the fact that at such ports of entry where they are officially designated by the respective acts to serve there are no assistant appraisers charged specifically with the examination of drugs, as is the case at the port of New York, where the duties of the examiners of drugs are performed by an assistant appraiser with the aid of an examiner.

For the better administration of the service it is respectfully urged that these appointments of examiners of drugs should be placed on the same footing with other examiners of merchandise, their appointments to be made, as is now the law with regard to the latter class, by the Secretary of the Treasury on the nomination of their chief customs officers—the appraisers of merchandise—at their respective ports.

With regard to the examiners of tea, while the organic act providing for the examination and inspection of tea as it stands to-day defines the duties of the examiners of tea, it does not in specific terms provide for the manner of the appointment of such examiner, but leaves it a matter to be determined by the Secretary of the Treasury, who appoints examiners of merchandise for the purpose and assigns them to duty as tea examiners at the different ports where their services are required. It is claimed by the merchants engaged in the importation of tea, approved by the tea board, so called, at the port of New York, that it is exceedingly difficult to obtain the highest order of proficiency and skill as tea examiners at the small salaries now provided to be paid examiners of merchandise, which is limited at the port of New York to \$2,500 per annum. It is likewise believed that in the better administration of the tea act, so called, and in the interests of commerce, more skillful men should be employed, who can only be obtained by means of increased compensation.

With reference to the examiners of merchandise, they are the aids, at the port of New York, to the assistant appraisers in determining foreign market value, and at other ports where there are no assistant appraisers they are the direct aids to the appraisers of the ports in obtaining the same results and in ascertaining foreign market value, the basis of all appraisements. No class of officers in the customs service occupy more responsible positions requiring more exacting duties. They are officers whose knowledge as experts is obtained by years of experience and by close application to study and familiarity with the foreign market values, involving questions of cost of manufacture and production, making necessary great research and close attention to the business they have in hand. Experience at the port of New York has demonstrated the fact that these examiners of merchandise are men who become so proficient and familiar as experts with the various classes of merchandise that they are called upon to examine that frequent inducements are made to them from outside interests which they of necessity, because of their small compensation in proportion to the value of their services, are obliged to accept, and they are lost to the customs service because of the additional opportunity of personal benefit, while taking to their new employers their expert knowledge and information which they have obtained and acquired while in the service of the Government.

Instances are cited where private employment has been given to these men with salaries ranging from \$5,000 to \$7,000 and more per annum. The steel trust has taken from the service already one of

its best experts, while the large mercantile houses in New York City and elsewhere have taken a number of the same class of expert officers possessing rare and valuable expert knowledge relative to textiles and other lines of merchandise which makes their services invaluable to their new employment. The maximum compensation permitted by law as it stands to-day at the port of New York, for examiners of merchandise is \$2,500 per annum, which is wholly insufficient as a fair compensation for their work. This limit to their compensation, like that of the compensation of assistant appraisers, was fixed by law more than forty years ago and has never been changed. The interests of the revenue, in my judgment, will be safeguarded and the service greatly benefited by conferring upon the Secretary of the Treasury the authority which the bill in question provides, of permitting, in meritorious and valuable instances, the increase of the compensation of this class of employees to figures (not exceeding \$4,000 per annum) commensurate with the amount of work they perform and the great value of the services they render to the Government.

A fair estimate of the increase of expense in meeting the provisions of the bill in question at the port of New York would not, in my judgment, exceed in round figures the sum of \$50,000 per annum over the amount already expended therefor.

Mr. UNDERWOOD. This bill does not apply only to the port of New York, but applies to all the ports?

Mr. FOWLER. Yes, sir.

Mr. UNDERWOOD. Have you estimated the increased cost for the whole bill as applying to the country at large?

Mr. FOWLER. Yes, sir.

It will also be observed that I have not considered the like increase for other ports throughout the United States, but it will be safe to say that such increase in compensation as contemplated by the provisions of the bill in question will not exceed in round figures the sum of \$50,000 additional. Therefore, the total increase in salaries of the customs service specified in the bill for the entire United States will not exceed \$100,000 a year, certainly a very small sum when considered in connection with the benefit that will be derived therefrom to the revenue. Is that satisfactory?

Mr. UNDERWOOD. Yes, sir.

Mr. FOWLER. The total appraised values of merchandise upon which duties were assessed and collected at the port of New York for the fiscal year ending June 30, 1907, exceeded \$852,000,000, and, while it is possible that there may be a falling off in such appraised values for the current fiscal year, the duties of the examining officers will not be diminished, but will, on the other hand, require the same skill and knowledge as in the preceding fiscal year.

I repeat that I can not recommend too strongly the passage of this bill, which I believe will result in the greatest benefit possible to the interests of the Government.

My attention is also directed to H. R. 292, introduced by Mr. Dunwell December 2, 1907, and providing that the assistant appraisers of merchandise at the port of New York shall receive a salary of \$4,000 per annum, payable out of the appropriation for the expense of collecting the customs; also H. R. 294, introduced on the same day by Mr. Dunwell, providing that the deputy collectors, deputy

surveyors, and the deputy naval officer at the port of New York shall receive a salary of \$4,000 per annum, payable out of the same appropriation.

H. R. 9155, introduced by Mr. Bennet December 16, 1907, providing that section 2731 of the Revised Statutes be amended by striking out the words "three thousand dollars a year" and inserting in the place thereof the words "four thousand five hundred dollars a year."

This section of the Revised Statutes relates exclusively to the salaries of the assistant appraisers at the port of New York and increases their compensation from \$3,000 per annum, as now provided, to \$4,500 per annum.

I can not recommend the favorable consideration of this bill for the reason that it makes the compensation of assistant appraisers equal to that of the assistant secretaris of the Treasury and in excess of the compensation paid deputy collectors, whose duties are equally as responsible, if not more important, than those of the assistant appraisers; besides it is increasing the compensation of a class of officers beyond the figure that would be, in my judgment, fair and reasonable.

H. R. 13258 was introduced January 11, 1908, by Mr. Sherman, providing that the salaries of deputy surveyors at the port of New York shall be equal to and the same amount that is paid to the deputy collectors at that port.

The salary of the deputy surveyors at the present time is \$2,500 per annum, while the salary of deputy collectors is \$3,000 per annum, so that independently of other legislation, the passage of this bill would be in effect to raise the salaries of deputy surveyors to \$3,000 per annum without affecting the present rate of salary paid to deputy collectors.

With due consideration to the value of the services rendered by deputy surveyors, the importance of their duties is not, in my judgment, so great as that of some of the deputy collectors, and an arbitrary law fixing their compensation at the maximum amount, regardless of the value of such services, would, in my judgment, be not only unfair, but would not have the proper regard for the interests of the revenue that it should have, and leaves no discretion with the Department to determine the value of such services.

H. R. 16631, introduced February 7, 1908, by Mr. Dunwell, provides that the assistant appraisers of merchandise at the port of New York shall receive a salary of \$4,000 per annum instead of the salary they are now receiving of \$3,000 per annum, and also provides that the amount necessary to pay such increase in compensation for the balance of the current fiscal year and for the fiscal year ending June 30, 1909, is hereby appropriated as an increase to the appropriation for the expense of collecting the revenue from customs for the years named, respectively.

H. R. 16634, introduced by Mr. Dunwell February 7, 1908, provides that the deputy collectors, deputy surveyors, and deputy naval officer at the port of New York shall receive a salary of \$4,000 per annum instead of the salary they are now receiving, and further provides that the amount necessary to pay such increase in compensation shall be appropriated in like manner.

It is therefore observed that H. R. 16631 and H. R. 16634 are in fact substitutes for H. R. 292 and 294 introduced by Mr. Dunwell December 2, 1907, and are identical with the exception of making the additional appropriation for the increase therein provided.

It is further noticeable that H. R. 16631 and 16634, providing for the increase of compensation of deputy collectors, deputy surveyors, and deputy naval officer of customs, and assistant appraisers of merchandise, are all of them bills which relate solely to the officers therein named stationed at the port of New York and are in their entirety local bills which affect only the status of the officers now in the district of New York.

Serious opposition could undoubtedly be advanced against this local legislation. Not only in my judgment would it be unfair to the officers of customs service at other ports, but the bills by their terms especially bind the Government to pay the maximum salaries therein mentioned, reserving no discretion or judgment to any supervising authority, which should be, in my further judgment, placed solely within the jurisdiction of the Treasury Department to be governed by the condition of the revenue and the interests of the service.

INSPECTORS.

My attention is likewise directed to several bills relating to the compensation of inspectors of customs, commonly known as day inspectors as contradistinguished from night inspectors.

H. R. 264, introduced December 2, 1907, by Mr. McCall, authorizes the Secretary of the Treasury to fix the compensation of inspectors as he may think advisable, not to exceed in any case the rate of \$5 per diem, and in all cases where the maximum compensation is paid no allowance shall be made for meals or other expenses when required to work at unusual hours.

H. R. 3906, introduced December 3, 1907, by Mr. Boutell, authorizes the Secretary of the Treasury to increase the compensation of inspectors of customs not to exceed \$6 per diem at the ports of New York, Chicago, Boston, and Philadelphia, and such other ports as he may designate.

H. R. 4052, introduced December 3, 1907, by Mr. Madden, fixes the compensation of customs inspectors at the ports of New York, Boston, and Chicago, and directs the Secretary of the Treasury to fix the compensation of inspectors of customs at the ports named, and at such other ports as he may deem it advisable, by adding to their compensation \$1 per diem.

H. R. 4888, introduced by Mr. Dunwell December 5, 1907, authorizes the Secretary of the Treasury to increase the compensation of day and night inspectors of customs at such ports as he may deem advisable so to do by adding to their compensation a sum not to exceed \$1 per day or night.

H. R. 9225, introduced by Mr. Moore December 16, 1907, authorizes the Secretary of the Treasury to fix the compensation of inspectors of customs as he may think advisable, not to exceed in any case \$6 per diem, and in all cases where the compensation paid is more than \$4 per diem no allowance shall be made for meals or other expenses incurred by inspectors when required to work at unusual hours.

H. R. 13093, introduced by Mr. Kahn January 10, 1908, authorizes the Secretary of the Treasury to increase the compensation of such inspectors of customs as are regularly employed at the port of San Francisco and fix their compensation at the maximum sum of \$5 per diem.

S. 4066, introduced by Mr. Hopkins, provides for the maximum compensation of inspectors of customs not to exceed \$6 per diem at the ports of New York, Chicago, Boston, Philadelphia, and San Francisco, and such other ports as the Secretary of the Treasury may designate.

H. R. 16633, introduced by Mr. Dunwell February 7, 1908, authorizes the Secretary of the Treasury to increase the compensation of day and night inspectors at such ports as he may deem advisable so to do by adding to their compensation a sum not to exceed \$1 per diem.

These bills above specified propose to advance the salaries of inspectors of customs at the various ports in the United States to figures varying from \$5 to \$6 per diem. An examination of the question develops the fact that the compensation of this class of officers at the port of New York was increased from \$4 to \$5 per day about two years ago, and if it shall be deemed advisable by the Department to increase their compensation still further, making it \$6 per day at such ports as the Secretary of the Treasury shall designate, I have no recommendation to interpose by way of objection thereto. It would seem, however, in fairness to the objects sought to be obtained by the provisions of H. R. 11709, introduced by Mr. Sherman, and first herein referred to, with regard to the compensation of deputy collectors, deputy surveyors, and deputy naval officers of customs, assistant appraisers, examiners of merchandise, and others, that the relief asked for in their behalf should first be granted before the further increase of the salaries of inspectors of customs.

NIGHT INSPECTORS.

My attention is also directed to H. R. 247, introduced by Mr. Dunwell December 2, 1907, and H. R. 4888, introduced by Mr. Dunwell December 5, 1907, also H. R. 16633, introduced February 7, 1908, by Mr. Dunwell, providing for the increase in compensation of night inspectors at the port of New York, and I desire to invite attention to the fact that these bills are somewhat misleading in their character for the reason that they would seem to imply that the duties of night inspectors are similar to those of day inspectors or inspectors of customs. Such is not the fact. A night inspector is nothing more nor less than a night watchman. His office would seem to bear the title of a misnomer. He is neither a boarding officer nor a discharging officer, nor an inspecting officer within the meaning of the law, as a day inspector or inspector of customs. He is more of a policeman or watchman, as stated, than anything else. His duties, as a rule, begin at a fixed hour in the evening and continue until a fixed hour at night, when the relief to which he belongs is discharged from further duty and another relief of night inspectors—watchmen or policemen—take their places, and are supposed to keep vigilant watch over the merchandise, vessels, and other property intrusted to their supervision, watchfulness, and keeping. I must say that in

my judgment a gross injustice would be committed by increasing the compensation of this class of officers beyond the compensation which they are now receiving, at the rate of \$3 per diem, which I believe is full, ample, and just.

ASSISTANT WEIGHERS AND ASSISTANT GAUGERS.

My attention, in like manner, is directed to H. R. 295, introduced by Mr. Dunwell December 2, 1907, authorizing the Secretary of the Treasury to increase the compensation of assistant weighers at the port of New York by adding to their present compensation the sum of \$1 per diem.

H. R. 16632, introduced by Mr. Dunwell February 7, 1908, authorizes the Secretary of the Treasury to increase the compensation of assistant weighers at the port of New York by adding to their present compensation the sum of \$1 per diem and providing for the necessary appropriation.

H. R. 293, introduced by Mr. Dunwell December 2, 1907, authorizes the Secretary of the Treasury to increase the compensation of assistant gaugers in the customs service at the port of New York by adding to their present compensation the sum of \$1 per diem.

H. R. 16635, introduced by Mr. Dunwell February 7, 1908, is identically the same as H. R. 293, excepting that it provides for the necessary additional appropriation.

The present compensation now paid to assistant weighers and assistant gaugers at the port of New York is \$4 per diem, which, in my judgment, is a reasonable, fair, and just compensation in consideration of the services rendered. Sugar samplers, whose work is much harder, with hours equally as laborious, and who are exposed more to the elements than either of the classes of officers named, do not receive more than \$1,350 per annum each, and they are satisfied with their compensation. Therefore I can not give these bills my recommendation.

WATCHMEN AND LABORERS.

H. R. 13676, introduced by Mr. Calder January 14, 1908, authorizes the Secretary of the Treasury to increase the compensation of watchmen in the customs service at the port of New York, as he may think advisable, to a rate not to exceed \$1,000 per annum and making the necessary increase in the appropriation to pay the same.

H. R. 16869, introduced by Mr. Calder February 11, 1908, authorizes the Secretary of the Treasury to increase the compensation of watchmen in the customs service at the port of New York, as he may think advisable, to a rate not to exceed \$3 per diem and making the necessary additional appropriation.

These bills, specifying the employees therein named as watchmen, would seem to contemplate the creation of a new class or grade, and while watchmen, so called, are employed by authority of the Secretary of the Treasury and paid out of the general fund for the collection of the revenue from customs, their compensation can be increased at any time by the Secretary of the Treasury in any amount which he deems proper, and I therefore do not see the necessity for specific legislation with regard to them *eo nomine*, the same objection being advanced that it increases their compensation to an arbitrary maximum sum,

which should not, in my judgment, be done, because the interests of the revenue may require a lesser compensation in times of necessity. I do, however, approve of the general plan of giving more compensation to this class of employees and earnestly recommend the increase of the appropriation for that purpose, which would overcome any obstacle in the way of advancing their interests at the present time.

H. R. 9162, introduced December 16, 1907, by Mr. Bennet, relating to the compensation to be paid to laborers, and H. R. 13669, introduced January 14, 1908, by Mr. Bennet, relating to the compensation to be paid to warehouse laborers at the port of New York, meet with the same objection as the preceding bills introduced by Mr. Calder, for the reason that the Secretary of the Treasury has full power under the law as it stands to-day to increase the compensation of laborers to any figure which he may deem proper. All that is necessary to accomplish such result is to place under his control a sufficient appropriation to meet the increased expense.

I can not recommend the passage of these bills, as ample provision is already made by law for the objects therein sought to be obtained, wanting only, as stated, the appropriation to make the same effective.

LOCAL BILLS.

H. R. 3964, introduced by Mr. Smith, of Arizona, and relating to the customs districts of Arizona, and H. R. 11740, introduced by Mr. Kahn, amending section 2746, Revised Statutes, providing additional compensation of 25 per cent to be continued to the appraisers, deputy collectors, deputy surveyors, and deputy naval officers and weighers at the port of San Francisco, being local bills, I do not feel qualified to make any recommendation in regard thereto.

H. R. 11708, introduced by Mr. Sherman, fixing the salaries of general appraisers at the rate of \$10,000 per annum, being in its nature a general bill (and not local) for the benefit of the entire country, it has my full approval, and I earnestly recommend that it be favorably considered by the committee.

I desire to say, gentlemen, that the bill referred to, H. R. 11708, has been superseded by a bill which, as I understand, is now before your honorable committee, H. R. 17506, introduced by Mr. Sherman, which is the same as the bill I have read, excepting that it provides for retirement, which I am also heartily in favor of.

Gentlemen, I thank you very much for your kind consideration and hope I have not intruded upon your indulgence.

Mr. UNDERWOOD. In the first Sherman bill you approve of are there any employees included who are now under the civil-service regulations?

Mr. FOWLER. Yes, sir.

Mr. UNDERWOOD. I would like to know which are included under the present civil-service regulations and which are not?

Mr. FOWLER. The assistant appraisers and the special examiners of drugs, referred to in the bill, are not under the civil-service law.

Mr. UNDERWOOD. And all the balance are?

Mr. FOWLER. Yes, sir.

Mr. UNDERWOOD. This bill proposes to make them out from under the civil-service regulations?

Mr. FOWLER. No, sir. As I understand the provisions of the civil-service law, that is a matter for the President to decide, whether he would embrace them within the civil-service rules or not; it is not imperative.

Mr. UNDERWOOD. This bill—I have not read it myself and therefore I am not familiar with it—but, as I understand, it does not provide that they shall be subject to the regulations of the Civil Service Commission.

Mr. FOWLER. No, sir; it does not.

Mr. UNDERWOOD. This follows the general law?

Mr. FOWLER. The Secretary of the Treasury has the power of appointing customs officers.

Mr. COCKRAN. That is so now?

Mr. FOWLER. Yes, sir.

Mr. COCKRAN. And this simply continues it?

Mr. FOWLER. Yes, sir; with regard to this class.

Mr. UNDERWOOD. The enactment of this statute, without referring to the civil-service law, as I understand, would authorize the appointment of these men to these positions exclusive of the civil service, without the President, by a general order, should include them under the civil service?

Mr. FOWLER. Yes, sir.

Mr. UNDERWOOD. Are you in favor of exempting these people from the civil-service regulations?

Mr. FOWLER. That is a matter that I am not so much interested in, whether they are exempted from the civil-service regulations or not, so long as their qualifications are adhered to as originally provided in the act of July 28, 1866.

Mr. UNDERWOOD. Do you come before the committee recommending that a bill be passed so that these men shall be exempted from the civil-service requirements?

Mr. FOWLER. No, sir; I do not.

Mr. UNDERWOOD. Does the Department make any recommendation?

Mr. FOWLER. I do not know.

Mr. UNDERWOOD. Is it your desire or the desire of the Department to have these men removed from the present civil-service regulations?

Mr. FOWLER. No, sir.

Mr. UNDERWOOD. Is the appointment of the men under the present civil-service rules and regulations satisfactory now?

Mr. FOWLER. It is very satisfactory to me, sir.

Mr. UNDERWOOD. This recommendation which will increase the cost of the service brings up this question: The cost of collecting the customs revenue is greater than the cost of collecting the internal revenue. Is there any opportunity for this committee in making this increase that you recommend to also make a decrease that would reduce the cost of collection?

Mr. FOWLER. I think not, for the reason that while there may be a falling off in the revenues there will not be a falling off in the work. The same amount of expert skill will be required to be kept on hand.

Mr. UNDERWOOD. There is no reorganization which your office could effect which would reduce the cost of collecting these revenues?

Mr. FOWLER. Not that I am advised of at the present time.

Mr. LONGWORTH. As to the inspectors, I understood you to draw a very sharp distinction between the day and night inspectors?

Mr. FOWLER. Yes, sir.

Mr. LONGWORTH. And the day inspector is the officer whose hours are from sunrise to sunset?

Mr. FOWLER. That is the wording of the regulation, but I think it is fair to state that the sun is up when they go to work in the morning. Sometimes they work until late at night, and they may be kept all night.

Mr. LONGWORTH. What I do not understand is in regard to payment for extra services. Under what circumstances are they paid for working overtime?

Mr. FOWLER. Where a steamer is discharging at night and the day inspector works at night he is paid extra compensation for his night's work.

Mr. LONGWORTH. That only applies to unloading a cargo?

Mr. FOWLER. That applies to ships discharging, so that they can go on their regular trips. It is not continuous, however. The inspectors do not work every night. I can not tell you how many times a month that occurs; it depends altogether on the condition of the business.

Mr. LONGWORTH. They are not paid for inspecting baggage overtime?

Mr. FOWLER. No, sir; that is a part of their regular duties. That is not regarded as night work. When I was the appraiser of the port and the examiners worked late at night or all night I used to allow them something for their dinner, and if they worked all night I would let them off all of next day to rest up. I presume that the same course is followed by the surveyor now in the handling of his inspection force.

Mr. LONGWORTH. They are not paid directly by the owners of the cargoes or ships?

Mr. FOWLER. They are only paid by the owners for the work of night discharging.

Mr. LONGWORTH. Is that a substantial amount that they receive from the steamship companies for the overtime work?

Mr. FOWLER. Yes, sir; approximately, I should say that it increases their compensation from between \$200 and \$300 a year. For instance, an inspector under the present law receives a salary of \$5 a day, which would be \$150 a month, say \$1,800 a year. I think an inspector of customs with the extra work he would get in discharging vessels at night would bring his pay up probably \$200 more, so that his compensation would be about \$2,000, possibly. It is pretty hard to fix the exact amount; I am only approximating that.

Mr. NEEDHAM. The compensation varies, does it not?

Mr. FOWLER. Yes, sir. What I want to invite the committee's attention to is the misnomer of "night inspectors." There is an impression that those men work at night on the same kind of work that the day inspectors work on. That is not so.

Mr. LONGWORTH. They are not allowed to under the law?

Mr. FOWLER. No, sir.

Mr. GAINES. They are merely watchmen?

Mr. FOWLER. Yes, sir. I think their compensation of \$90 is pretty good compensation, because I happen to know something of

the pay in private employment. I think in such employment they usually pay \$60 or \$70 a month for a night watchman.

Mr. LONGWORTH. Is there a substantial difference between the amount of work that the New York customs officers have? Is there not a difference between that port and other ports—San Francisco, for example?

Mr. FOWLER. Of course it places me in rather an unpleasant position to draw comparisons, but I should say by reason of the large volume of work that is done at New York—when you stop to consider that seven-tenths of all the merchandise coming into the United States reaches the port of New York, you can see at once that the work would necessarily be greater than at other ports. That is, the hours would be longer. I think the work has to be handled a little faster than at some other ports in order to get through, although I think at some of the other ports they have some most excellent men. Boston has good inspectors, so has Philadelphia, so has Chicago and the other large ports, but they are comparatively few when compared with the New York force. When you take seven-tenths of the revenue for one port that leaves three-tenths to be distributed among the other ports.

Mr. LONGWORTH. Your idea is to have a maximum compensation and then give the authority to the officials?

Mr. FOWLER. If Congress sees fit to fix their compensation at \$6 per diem at such ports as the Secretary of the Treasury shall designate, I certainly shall have no objection to interpose, but I think it should be left with the Secretary for this reason, that if the revenues fall off and the work grows considerably less instead of dropping them out of the service entirely, it may be necessary, in order to meet the conditions of the revenue, to reduce their compensation for the time being, but keep them in the service, and when the commerce gets up again you can bring their pay up to what the law allows the Secretary to pay them. I think to pay all the inspectors at the port of New York \$6 a day arbitrarily by law would be very unwise. I think there are men there who should receive that amount, some excellent men. I think it would be an excessive amount to pay some of the others. They are all receiving \$5 a day now. There should be, in my judgment, two grades. The \$6 grade should be the higher grade, for the man working harder and who is entitled to more. The Department can adjust that and fix it according to the conditions of the appropriation. My experience has been that it is unwise to fix an absolute compensation at one rate, because if you fill the place you have to fill it at that maximum salary, when you find the conditions of the work are such that the place could be filled and filled as well for probably two-thirds, possibly half, for the time being, until the conditions of the appropriation and the conditions of business warrant paying the man the full maximum salary.

I know there has been advanced against the Sherman bill the talk about assistant appraisers and examiners, "the sliding-rate bill," as they call it; they have had some suspicion about the fairness of filling the places. I do not think there is any disposition to slide the rates one way or the other. You can fix the compensation at what figure it should be and pay them what would be proper, considering at all times the conditions of the revenues.

Mr. CLARK. How many hours a day do these men work?

Mr. FOWLER. My own hours of labor usually commence at 8.30 in the morning and last until 6.30 in the evening.

Mr. CLARK. I am not asking what you do, but what the inspectors and men like that do?

Mr. FOWLER. According to the regulations, the inspectors go to work at sunrise and work until sunset, but I think as a fact they begin at 7.30 or 8 o'clock in the morning and work until the work of the day is completed. If a vessel is discharging a cargo or passengers, they may be kept there until 9 or 10 o'clock at night. That is very often the case during the busy season.

Mr. CLARK. One reason why the New York office can discharge more business is that the merchandise comes in larger quantities than it does at the other places, as a rule?

Mr. FOWLER. Yes, sir.

Mr. CLARK. An inspector inspects one bundle of silk out of a cargo of silk, and that is why the New York office gets along with less work proportionately?

Mr. FOWLER. I think they all work very well, and when it comes to cases and packages they are required to examine them all very carefully, and it takes a good deal of time.

Mr. CLARK. As a matter of fact, do they examine them all very carefully?

Mr. FOWLER. They should.

Mr. CLARK. I know they should.

Mr. McCALL. Referring to the bill which I introduced to increase the pay of the inspectors at ports other than New York to \$5 a day, I did not understand you to express any opinion on that bill?

Mr. FOWLER. I stated that I had no objection to interpose to increasing the compensation of any inspectors at any port if it was placed under the control of the Department, if the Department deems it wise. They evidently do, because I understand they favor the increase.

Mr. McCALL. I understood you to say that the inspectors at New York, having recently been increased to \$5—

Mr. FOWLER (interrupting). Two years ago.

Mr. McCALL (continuing). You did not think it would be just to increase them to \$6 a day until some other officers had their salaries adjusted accordingly?

Mr. FOWLER. That it was fair to the officers named in the Sherman bill that the question of increasing their compensation should first be considered and disposed of, because of the fact that they have had no increase in these grades for over forty years, before further increase was made in the lower grades, such as inspector. I do not wish to stand in the light of objecting to the inspectors' increase which the Department has in one or two instances recommended. I do not wish to go counter to the wishes of the Department.

Mr. McCALL. That is what I understood. I understood that the qualification applied to the inspectors at New York, who had recently had their pay increased, that you thought it was not wise to give them a further increase at the present time.

Mr. FOWLER. That applies to the inspectors. Of course the Sherman bill is a general bill and it does not apply to any particular port or district, but applies to the officers specified in the bill all over the United States.

Mr. McCall. Because the inspectors at New York have recently had their pay increased would not be any reason why the inspectors outside should wait?

Mr. Fowler. I made no objection to that at all; in fact I am in favor of the bill increasing the pay of inspectors so long as the subject is under the control and adjustment of the Treasury Department.

STATEMENT OF HON. J. HAMPTON MOORE, A MEMBER OF CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. Moore. I have introduced two bills representing the interests of the port of Philadelphia. I want to say just a word in behalf of the Philadelphia inspectors, concerning whom I have introduced a bill fixing a proper rate, not to exceed \$6, and leaving the payment within the discretion of the Secretary. Since introducing that bill I have been advised that the bill introduced in the Senate by Senator Hopkins fixing a maximum rate of \$6 would be entirely satisfactory to those who induced me to introduce the bill, and I am perfectly willing to withdraw that bill, if the committee will give consideration to the Senate bill.

I desire to say that everything which has been stated here with regard to extra work and increase in the cost of living at the port of New York applies equally to Philadelphia. Our inspectors have been suffering certain hardships and everything that has been stated in the way of appeals would apply equally to our inspectors. If the committee desires to hear from those who are in charge of these matters, I would be very glad to have them appear before the committee.

Another bill of mine is H. R. 17044, to provide for the lading or unlading of vessels at night, to facilitate the entry of vessels, and for other purposes. This bill has been presented at the request of certain business interests of the port of Philadelphia, who desire to facilitate the lading and unlading of vessels at night. It also contemplates the payment of our employees for extra work, besides the inspectors, who are the sole representatives of the Government that receive compensation under section 2871 of the act of June 30, 1906. If you will take the trouble to look at that section you will observe that extra compensation, which is derived from the shipowners or agents and which does not come out of the Treasury is paid only to inspectors engaged in the night work. Others, like assistant appraisers, clerks, and employees, who are engaged in the night work along with the inspectors are not provided for at all, and inasmuch as they have to do the work and do it without compensation it seems fair that some provision should be made to pay them as well as the inspectors, and the bill I have introduced covers that point.

Mr. Chairman, that is all I have to submit.

(Thereupon the committee took a recess until 2 o'clock p. m.)

MONDAY, *March 9, 1908.*

AFTERNOON SESSION.

The committee met pursuant to adjournment, with Hon. Sereno E. Payne in the chair.

Present: The chairman and Messrs. Dalzell, McCall, Needham, Gaines, Bonyngé, Longworth, Clark, Underwood, and Randell.

The CHAIRMAN. You may proceed, Mr. Giovannoli.

**STATEMENT OF MR. H. GIOVANNOLI, CHIEF CLERK OF THE
INTERNAL REVENUE BUREAU.**

MR. GIOVANNOLI. Mr. Chairman, Mr. Capers, the Commissioner of Internal Revenue was asked to come here this morning, but he was compelled to leave the city, and he instructed me to come here for him. So, I am here at his direction to answer any questions that you gentlemen may want to ask regarding House bills Nos. 10572, 17309, 18118, 18332, and 18520.

The CHAIRMAN. Those are bills providing for additional leave?

MR. GIOVANNOLI. The first bill stated in this list is to grant leave of absence with pay two and a half days in each month to gaugers, storekeepers, and storekeeper-gaugers. These men are men who are on duty at distilleries during their operation and they are per diem employees. Their compensation runs from \$2 to \$5 per day, according to the capacity of the distillery at which they are stationed. Two of these bills provide for two and a half days' leave of absence each month, and another bill provides for twenty-one days' leave of absence. I do not think the Internal Revenue Bureau has ever proposed such a measure. However, if the Congress should see fit to grant it, it would entail an expense. These men, it must be borne in mind, are not constantly employed. There are some 2,000, all told, of the three classes of officers, gaugers, storekeepers, and storekeeper-gaugers. They are employed on an average of nine months in the year. If you propose to give them a leave of absence based on two and a half days per month for the time during which they are employed, it will require an additional appropriation of about \$150,000. That is an estimate. When I was told this morning to come here, I did not have time to get the exact figures, but approximately it will require \$150,000 a year to meet this provision.

The CHAIRMAN. It comes down simply to a proposition of an increase in their pay. That is substantially the result?

MR. GIOVANNOLI. These men in the field know that the Government clerk is allowed thirty days' annual leave and they feel that they are entitled to the same consideration and that is the basis of the claim. Of course it would amount to an increase in their compensation of about \$75 a year, based on the time they are employed.

The CHAIRMAN. They actually have three months' leave without pay now?

MR. GIOVANNOLI. Yes, sir. On an average these men are only employed about nine months in a year.

MR. BONYNGÉ. What is their compensation?

MR. GIOVANNOLI. From \$2 to \$5 a day, according to the capacity of the distillery. If the distillery, in our language, mashes less than

20 bushels of grain, we pay them \$2 a day and so on up to \$4, according to the capacity of the distillery.

Mr. BONYNGE. They are only paid while at work?

Mr. GIOVANNOLI. Yes, sir.

Mr. GAINES. They are off duty three months in the year?

Mr. GIOVANNOLI. Yes, sir.

Mr. GAINES. And they want to be paid for thirty days of the three months?

Mr. GIOVANNOLI. Yes, sir. They want two and a half days for each month employed, which would be substantially what the Government clerk gets.

Mr. DALZELL. Did you say that was Mr. Graff's bill?

Mr. GIOVANNOLI. Yes, sir. The bills introduced by Mr. Graff, Mr. Johnson, and Mr. Langley are in substance the same. Of course, I imagine the committee would not want to consider giving them thirty days' leave of absence, and in order to meet the fact that they are not constantly employed they have reduced it to two and a half days a month for each month in which they are employed. They are per diem employees. Gaugers get not exceeding \$5 a day and storekeeper-gaugers get not exceeding \$4 a day; a great many get \$2 a day.

Mr. LONGWORTH. What is the difference between the two classes?

Mr. GIOVANNOLI. The gauger is the man who superintends the withdrawal of distilled spirits from the warehouse and gauges them when the tax is paid. The storekeeper-gauger combines the duty of the man who has supervision of the distillery and also the withdrawal. In small distilleries where one man can do the work they call him a storekeeper-gauger, and in a large distillery the storekeeper supervises the distillery proper, the weighing of the grain, while the gauger is constantly engaged in measuring spirits withdrawn for removal from the premises. He is paid fees, but can not be paid more than \$5 a day.

Mr. GAINES. It is the policy of the Bureau to very frequently change storekeepers and gaugers, to relieve them from duty at a particular distillery and to assign some one else?

Mr. GIOVANNOLI. That is the theory upon which we go, that it is necessary for good administration that the men be frequently transferred.

Mr. GAINES. They do not work constantly at some one place?

Mr. GIOVANNOLI. No, sir. They are reassigned every month. As a rule an effort is made to change their location in order to avoid possible fraud.

Mr. GAINES. Do they not get some relief from active work in the process of being changed from one place to another?

Mr. GIOVANNOLI. No, sir; not now. This winter it was recommended that an appropriation be made to enable the Bureau to pay the expenses of these men to and from their homes to their places of assignment. In many sections of our territory these men receive small compensation and their expenses to and from their place of assignment reach as high as \$15 and the Government now allows them nothing for that. The Bureau has recommended that an appropriation be made to permit the payment of the expenses of these men. That recommendation was made especially with reference to these small salaried men because they work in the mountain

sections and sometimes if the distiller does not get the officer he wants he suspends operations when the man arrives and the officer is out that much. The office also recommended at the same time that the Commissioner be permitted to pay the men at those small distilleries not exceeding \$4 a day. That was done for the purpose of getting competent men and honest men. It is very difficult to get a man to work in the mountains for \$2 a day and at the same time get a man who is honest and efficient.

MR. LONGWORTH. Has any bill been introduced to pay their traveling expenses?

MR. GIOVANNOLI. I do not think that such a bill has been drawn. The recommendation was sent through the Secretary of the Treasury, addressed, I think, to the chairman of the Appropriations Committee; but I have not seen that the bill has been drawn or introduced to pay the traveling expenses of these men. We pay the expenses of an officer of this type when he is transferred from one distillery to another. For instance, he leaves home on the first of the month and goes to one point, and if it is necessary or expedient to transfer him to another point, then we pay his expenses, but when he is ordered from his home to his station for a month he pays his own expenses from his home to the distillery premises.

I think the Commissioner would cheerfully recommend that Congress make an appropriation so that these men be allowed leave of absence to the extent of two and a half days for each month that they are employed on the basis that the deputy collectors and the Government clerks generally are allowed that leave. Of course, we would not recommend that they be given thirty days leave of absence so long as they are only employed approximately nine months in the year.

MR. CLARK. The bill just increases their salary one-ninth?

MR. GIOVANNOLI. Yes, sir.

The other bill introduced by Mr. Barchfeld, H. R. 18520, to pay expenses incurred when injured, the Commissioner would urge the passage of.

MR. DALZELL. Is that confined to officers and employees in the Internal-Revenue Service?

MR. GIOVANNOLI. Yes, sir; officers or employees of the internal-revenue service. That bill would not cost the Government exceeding \$3,000 a year. That is just a guess to the extent that I do not know what the bill would have cost the past year. The demand for this legislation arises from this, that recently several of our men who were looking for moonshiners in a certain State were fired on. One of them was killed, and I think one or two badly wounded. The collector of internal revenue paid the bills for the doctor, nurses, and for supplies, in all \$500, and there is no fund from which he can be paid. If an internal-revenue man is killed 300 miles from his home we can not pay for the return of the body to his home; he is no longer an internal-revenue officer. So, if the bill could be passed, I think it would be very just.

MR. BONYNGE. What does it provide for?

MR. GIOVANNOLI. For the expenses necessarily incurred for medical attendance, etc., when the officers are injured in field duty.

Mr. DALZELL. It would not cover taking a man home 300 miles?

Mr. GIOVANNOLI. I would suggest, of course, that the bill should be amended to that extent.

Mr. DALZELL. This covers medicines, hotel charges, and medical attendance?

Mr. GIOVANNOLI. Yes, sir.

Mr. LONGWORTH. If he was killed, this bill would not apply?

Mr. GIOVANNOLI. No, sir; but if he dies subsequently and they have a doctors' bill for medical attendance it could be paid.

Mr. DALZELL. Are those dangers that you speak of all the dangers there are incident to that service?

Mr. GIOVANNOLI. There is nothing particularly hazardous in the employment of storekeepers and storekeeper-gaugers, but these deputy collectors and internal-revenue agents who in the exercise of their duties are called into the moonshine districts are frequently fired upon and occasionally badly wounded, and inasmuch as they are men of small salaries we have thought that the Government should bear at least the medical attendance and supplies expenses.

Mr. NEEDHAM. Is there not sometimes an explosion or something of that kind?

Mr. GIOVANNOLI. There might be such a thing as a boiler explosion in a distillery.

Mr. NEEDHAM. Was there not one several years ago in Fresno County, Cal.?

Mr. GIOVANNOLI. I have an indefinite recollection that there was such an accident, but that is very rare.

Mr. BONYNGE. There are other classes of Government employees where the employment is far more hazardous.

Mr. CLARK. A storekeeper's business is just the same as being a clerk in a dry goods store. The traveling agent is liable to be shot in the moonshine districts.

Mr. GIOVANNOLI. I do not know whether other branches of the service have this protection, and I do not know why Mr. Barchfeld introduced this bill, but we are cordially in favor of it.

Mr. NEEDHAM. Are some of your people killed or wounded every year?

Mr. GIOVANNOLI. I suppose it would amount to one killed and four or five wounded a year, and probably two or three thousand dollars a year would more than meet the needs.

Mr. LONGWORTH. Does the bill say "actual expenses" or "reasonable expenses?"

Mr. GIOVANNOLI. "Necessary expenses," and approval of the accounts by the proper accounting officer. We have one collector now who paid about \$500, Collector Duncan, of one of the North Carolina districts, and he will have to sustain the loss unless he is reimbursed.

Mr. LONGWORTH. Was that for medical attendance?

Mr. GIOVANNOLI. Yes, sir.

The CHAIRMAN. That is all.

(Thereupon the committee adjourned.)

STATEMENT SUBMITTED BY HON. JOHN C. AMES, COLLECTOR OF
CUSTOMS, CHICAGO, ILL.UNITED STATES CUSTOMS SERVICE,
*Port of Chicago, February 20, 1908.*HON. SERENO E. PAYNE,
*Chairman Committee on Ways and Means,
House of Representatives, Washington, D. C.*

MY DEAR SIR: When in Washington recently I visited you in company with Congressman Madden, of this city, and you requested me to furnish you with a statement showing the duties performed by inspectors of customs at this port. I therefore beg to submit the following:

Inspectors of customs receive and check out bonded merchandise from cars and vessels; examine customs seals and locks; note condition of goods as they are discharged from car or vessel; set aside the required portion for the attention of customs weighers, gaugers, and examiners; release a certain specified part of each consignment to consignee pending final delivery, and send specified portions of consignments by licensed wagons to the United States appraiser's stores and to bonded warehouses.

They are also required to keep complete records of all transactions, and to submit a report (or "return") on every entry, showing the disposition in detail of each consignment, with notations of "short" or "over" shipments, and condition of any merchandise that may have been received in a damaged state.

They are also required to supervise the transfer of "in transit" bonded freight, passing through Chicago, from defective cars to cars in good condition, checking contents, sealing cars, and making proper notations on manifests.

They are also required to supervise export shipments on which drawback of duty paid is claimed, sealing the cars, filling out the manifests, certifying to the shipment, delivering same to the railroad, and taking receipt in triplicate of the agent thereof.

During the navigation season of each year a considerable portion of the force of inspectors is detailed for duty at the various steamship docks to handle bonded goods; also at the barge office, which is open day and night, boarding vessels and entering and clearing them.

During the summer season all the inspectors are on duty Sundays and holidays, supervising the lading of passengers on excursion boats to see that they do not exceed their licensed limit of passengers.

Two customs inspectors are constantly on duty in the post-office to handle packages received in the foreign mails supposed to be liable to customs duties, and during the holiday season the number of inspectors is increased according to the number of packages to be handled.

Customs inspectors are also assigned to perform the duties of storekeepers of bonded warehouses in case of their absence on account of sickness, leave, etc., and to perform such other duties as the business of the port may require.

Very respectfully, yours,

JOHN C. AMES, *Collector of Customs.*

SATURDAY, *March 14, 1908.*

The committee met at 10.30 a. m. with Hon. Sereno E. Payne in the chair.

Present: The chairman, and Messrs. Dalzell, Hill, Boutell, Needham, Calderhead, Gaines, Bonyng, Longworth, Clark, Cockran, Granger, Griggs, and Randell.

The CHAIRMAN. This meeting is called for the purpose of continuing the hearings on the salary bills.

Mr. Bennet, we will hear you.

STATEMENT OF HON. WILLIAM S. BENNET, A MEMBER OF CONGRESS FROM THE STATE OF NEW YORK.

Mr. BENNET. Mr. Chairman and gentlemen of the committee, I want to say a few words in behalf of the bills H. R. 9162 and H. R. 9155, the first of which relates to the compensation of laborers in the customs service at the port of New York, and the second of which relates to the compensation of the assistant appraisers, and also to object to some provisions of the bill H. R. 11709, known as the Sherman Bill, relative to the salaries of deputy collectors.

I would like to address myself first to the reasons why this committee ought to exercise jurisdiction relative to all of these bills, for the same question is involved. The point was raised at the last meeting of this committee that as to some of these offices, in fact, all, I think, except that of assistant appraiser, at the port of New York, the Treasury Department had already the right to increase salaries if it had the money to pay them. That is substantially accurate as far as the statement goes.

The bill for the increase of the compensation of laborers, which is No. 9162, was drafted by the Treasury Department, and by that I do not mean to say at all that the Treasury Department is committed to the bill. I simply told Mr. Reynolds what I wished to accomplish by the bill and asked him to have the proper officers of the Treasury Department put my ideas in proper form, which they did, without committing themselves to the object of the bill, simply providing the form.

Under the rules of the House, although that particular bill carries an appropriation, it being a public bill and having been referred to this committee, the committee secures thereby jurisdiction, and if it approves of the bill would have an absolute right to report it without any question of order.

The CHAIRMAN. If we reported that bill with an appropriation, of course it would be subject to objection, and if it required unanimous consent it probably would not go through the House.

Mr. BENNET. If you reported it through the basket, as a committee ordinarily reports legislation, there could be no objection, because it is a public bill, and it has been held time and time again that where a public bill has once been referred to a committee—

The CHAIRMAN (interrupting). It would not be subject to a point of order, but all these bills can only be considered by unanimous consent.

Mr. BENNET. In other words, it would have the same difficulty that any other bill would have?

The CHAIRMAN. No; but a bill appropriating money would invite objections from the Appropriations Committee.

Mr. BENNET. Yes; I quite agree with you on that, but I see no way in which the Appropriations Committee could make a specific appropriation now for this particular object. As I understand the jurisdiction of the Appropriations Committee, it can only make appropriations to carry out existing legislation. In other words, it has no legislative powers whatever. It can appropriate for objects which the Congress has authorized by preceding legislation.

Mr. HILL. Unless they put it on in the Senate and it comes back to the House.

Mr. BENNET. Yes, sir. I am talking about our House rules. There is no authority in law for fixing the salaries of laborers at any specific figure, \$700, \$900, or anything like that, and under the law which was passed in the Fifty-eighth Congress the Secretary of the Treasury would have no right to incur obligations in excess of the law—what had been authorized and appropriated for. In order to get an increase of salary you have to have two acts, as near as I can get at it. You have to have a law fixing the amount, that is, a certain salary, which, multiplied by a certain number of people, will give you a certain amount, and then you have to have action by way of appropriating the amount necessary to pay that specific amount. That is all that this bill, H. R. 9162, does. It fixes the salary at a sum not less than \$770 and not more than \$840 and appropriates the sum necessary to pay that increased salary for the balance of the fiscal year and for the succeeding fiscal year.

Mr. DALZELL. The salaries of laborers are not fixed at all by law now?

Mr. BENNET. No, sir.

Mr. DALZELL. The Secretary of the Treasury furnishes to the Appropriations Committee an estimate of the gross amount of money that he wants for laborers?

Mr. BENNET. He furnishes the Committee on Appropriations with an estimate of the gross amount that he will need during the next fiscal year for the collection of the revenues from customs.

Mr. DALZELL. That estimate is based on a sum that he has already determined shall be paid to laborers at so much a day?

Mr. BENNET. Yes, sir.

Mr. DALZELL. The Secretary of the Treasury fixes the wages now of the laborers?

Mr. BENNET. Yes, sir; he fixes the wages or salaries of the laborers now.

Mr. DALZELL. He puts them down as he sees fit?

Mr. BENNET. Yes, sir; but in any one year the Secretary of the Treasury can not fix the salary of laborers and pay them both. For instance, this is the fiscal year ending June 30, 1908, and he submitted his estimate in the last session of Congress, basing it on what the wages of the laborers were, and he got the money. Now, there is not a time during the year 1908 when he can raise the salaries of laborers, because he has not the money to do it.

Mr. DALZELL. But he could do it next year?

Mr. BENNET. He can not even do that, in the way of raising it.

Mr. DALZELL. Why not?

Mr. BENNET. For the next fiscal year he would have to go through all these steps; he would have to submit an estimate on a specific sum and take his chance of getting that estimate allowed by the Appropriations Committee, and then raising the salary the next year. It would take him two years to raise the wages of laborers if he started in to do it without legislation.

While it is true that one of the Assistant Secretaries of the Treasury came before the committee last week and said that he was then in favor of increasing the salaries of the laborers if he had the money—we all know that “a bird in the hand is worth two in the bush”—and what we want to do is to get an exact salary fixed by law and not be dependent absolutely on the whim of the Secretary of the Treasury, and then secure an appropriation to carry out the direction of Congress.

Mr. NEEDHAM. If your bill should become law and the revenue from customs should fall off 25 per cent, we would have to pay just what your bill authorized?

Mr. BENNET. He would not increase them.

Mr. NEEDHAM. There would be no sliding scale.

Mr. BENNET. My bill provides a maximum, but does not require the Secretary of the Treasury to pay the maximum.

In regard to the necessity, Assistant Secretary Reynolds spoke rather strongly in favor of the increase. The various associations interested in the cost of living in the city of New York, like the Association for Improving the Condition of the Poor, the Charity Organization Society, and the good people of that stamp appointed a commission which investigated exhaustively the subject of what a laboring man with a wife and three children ought to earn in any one year in order to live with the minimum of decency and comfort in New York City, and their report, which went into details, showed that the minimum salary that a laboring man ought to earn in New York was \$900 a year. At present these laborers are being paid only \$770 and the bill only proposes to increase their salary to \$840.

Mr. CLARK. Has not the cost of living in New York City fallen off a great deal in the last six months?

Mr. BENNET. I am not competent to judge; I have not been there.

Mr. CLARK. It is strange if it has not, because everything that is raised on the farm has gone down from 25 per cent to 40 per cent.

Mr. BENNET. The unanimous and universal testimony has been that the salary of these laborers ought to be higher than it is. My colleague, Mr. Parsons, has with painstaking care collected the evidence and statistics in regard to this matter and I would like to have that submitted and printed for the benefit of the committee.^a It is not very long.

Mr. HILL. If all these bills are not acted on, which do you think is the most worthy?

Mr. BENNET. The laborers, because they get the least money.

The CHAIRMAN. This report stated that the laborers ought to receive so much, did it throw any light upon the subject of the many thousand people in New York receiving a great deal less than that, not only laborers, but clerks?

^a This statement was not submitted to the committee.

Mr. BENNET. I am not sure that it did, but the ordinary mechanic earns more than that amount in New York City.

The CHAIRMAN. A mechanic earns more than a laborer.

Mr. BENNET. Yes, sir. These people while they are classed as laborers, I think it ought not to be forgotten that they have rather a large responsibility. Ten per cent of all the goods that come into the port of New York, and more than that if the appraiser of merchandise so desires, go into the public stores and are handled by these laborers, both before and after appraisement. They have to be men of responsibility. All the diamonds that the rich people west of New York have been buying in the last six years have gone through one door in the appraiser's stores in New York and at one time have been under the control and custody of a watchman by title who only receives \$840 a year. The responsibility on these men is great. They are not ditch diggers at all, or anything of that kind, not simply men who open the streets or do the lowest grade of manual labor, but men charged with the control and custody of very valuable merchandise.

In relation to the assistant appraisers and the other officers named generally in Mr. Sherman's bill, H. R. 11709, I agree with Assistant Secretary Reynolds that, next to the laborers, men of that general character ought to have their salaries increased. You take an examiner of wools, for instance, who by law is held down to the salary of \$2,500, and has to pass an examination, which if he can pass successfully there are firms in New York who will pay him anywhere from \$10,000 to \$15,000 a year for the same kind of knowledge, and the Government pits its \$2,500 examiner of wool against these men who are being paid by private corporations in New York anywhere from \$10,000 to \$15,000 a year. With the tremendous imports through that port, with the questions that are involved in these examinations, as to under which schedule goods come, we ought to be able to get as good a grade of men as are pitted against them—the experts employed by the outside firms before the general appraiser or the board of appraisers or the courts.

Mr. BONYNGE. Do you know how long the examiners have held their positions in New York?

Mr. BENNET. You mean the examiners?

Mr. BONYNGE. Yes, sir; the men you are talking about. They are the examiners?

Mr. BENNET. Yes, sir. I do not know how long they have been there.

Mr. BONYNGE. They get \$2,500?

Mr. BENNET. Yes, sir.

Mr. HILL. Some of them get \$3,500?

Mr. BENNET. No. In the port of New York they are limited by law to \$2,500, and above them comes the assistant appraiser, who gets \$3,000, and last year this committee reported a bill, which was passed by Congress, creating two special assistant appraisers at \$3,500.

I object to that part of the Sherman Bill which takes away from the President and puts in the jurisdiction of the collector——

Mr. FOWLER. The chief customs officer?

Mr. BENNET. I am informed by the Treasury Department that every customs officer in a customs district is nominated or appointed as the case may be by the collector of customs. I do not see how you could call the appraiser at the port of New York the principal customs officer in the district of New York. I should think the principal customs officer there was the collector of customs.

Mr. HILL. What are the laborers now getting?

Mr. BENNET. \$770.

Mr. HILL. Is that a per diem or a fixed annual salary?

Mr. BENNET. It is a fixed annual salary.

Mr. HILL. And you are asking for \$840?

Mr. BENNET. Yes, sir; a sum not to exceed \$840, and I am perfectly willing to have it extended to the customs laborers outside the port of New York.

An assistant appraiser is a quasi-judicial officer. A question comes up to him of fixing what specific goods are, for the purpose of classifying them, and then collecting the customs duties. He ought to be as free as possible. If he is a good man he should be kept. If he is an incompetent man he should be fired, but there ought not to be any man with the right to control his action and his judgment on the appraisement of merchandise by being in a position where he can increase or decrease his salary and not give any reason for it at all. If he made a decision on an appraisement that did not suit the principal customs officer, whoever he may be—Mr. Fowler thinks it means the appraiser and I think it means the collector—there ought not to be a man who could force his views on a man who is a judicial officer in the very potent way of being able to decrease his salary if he did not, or the potent way of being able to increase his salary if he did, agree with him. If an assistant appraiser, in the judgment of the appraiser, does not do his duty properly the appraiser recommends that his resignation be asked and he is put out of the service in a way, I think, that is all right, but so long as he remains there his judgment should not be interfered with. Then, of course, there is the very practical objection that you would not get the bill through the Senate in that form.

I want to call your attention also to the fact that both my bill, H. R. 9155 and Mr. Sherman's bill, H. R. 11709, will be ineffective in the form in which they are because they do not carry the appropriations, not having been drafted by the Treasury Department. If the Sherman bill is reported it ought to be amended by striking out that change in the method of appointment as to which the Treasury Department expresses neither approval nor disapproval, and adding to it the appropriation feature similar to that in my bill, H. R. 9162.

I personally would be satisfied with the increase provided for in the Sherman bill, which is \$4,000. For years the salaries of the assistant appraisers there have been 50 per cent of the salary of the appraiser. Congress raised the salary of the appraiser during the last Congress to \$8,000 from \$6,000, and if it wants to follow that with an increase in the salary of the assistant appraisers to \$4,000, it would be consistent with the legislation of the past. I have nothing further to say unless some member of the Committee desires to ask questions.

My colleague, Mr. Dunwell, has introduced several bills. He is in the south very ill, and I would like to obtain the permission of the

Committee to file a statement in his behalf relative to his bills. He has studied the various questions very thoroughly.

The CHAIRMAN. I have no objection to that, of course, but I do not think that Mr. Dunwell should be worried with any statement or anything of that kind.

Mr. BENNET. The statement is made up practically now and it would not worry him :^a

STATEMENT OF HON. BEN JOHNSON, A MEMBER OF CONGRESS FROM THE STATE OF KENTUCKY.

Mr. JOHNSON. Mr. Chairman, and gentlemen of the committee, there are three little bills pending before your committee that I have introduced and I promise to take only a few moments of your time:

One of those bills is H. R. 17309, and the substance of it is that it gives to each internal-revenue officer a vacation of twenty-one days during the year. My information is that they are the only officers in the whole service for whom no vacation is provided. Another feature of it is that they are employed only about two-thirds of the year. Within a few miles of my home there are 26 bourbon distilleries, no one of which has ever been known to operate more than six months in the year. The general average of their operations will fall below five months in the year.

The CHAIRMAN. I think they do better than that in my district.

Mr. JOHNSON. Out in my country we can not make good whisky in hot weather and we do not try.

Now, there is one feature of the law that perhaps not a member of this committee is familiar with. If one of these internal revenue officers engages in any other business while he is not at work for the Government, but under commission from the Government, that is ground for his dismissal from the service. In other words, there is an enforced idleness during the time when the Government is not using the man's services.

Mr. BONYNGE. What salary does he get, a per diem?

Mr. JOHNSON. Yes, sir; \$4 a day in my section.

Mr. GAINES. Is that enforced idleness caused by the law?

Mr. JOHNSON. Yes, sir; and the law should be repealed. If a man is caught in any other business during his idleness the collector discharges him.

Mr. COCKRAN. Does his pay go on?

Mr. JOHNSON. No, sir; only when he is on actual service.

Mr. NEEDHAM. Do you mean to say that he is prohibited by law from doing anything?

Mr. JOHNSON. Yes, sir; he is prohibited from going into business.

Mr. COCKRAN. Any kind of business?

Mr. JOHNSON. Yes, sir. It is ground for dismissal.

The CHAIRMAN. Is he prohibited by law from doing business at any time?

Mr. JOHNSON. Yes, sir.

Mr. COCKRAN. It only prohibits a man from taking service of any other character?

^a For Mr. Dunwell's statement see pages 118-123.

Mr. JOHNSON. No, sir.

Mr. COCKRAN. Does it prohibit him from engaging in business on his own account?

Mr. JOHNSON. Yes, sir; he can not do anything else for a livelihood.

Mr. COCKRAN. Would it prohibit him from putting in coal?

Mr. JOHNSON. Yes, sir; he would be dismissed.

Mr. RANDELL. Is he prohibited from working his own plow?

Mr. JOHNSON. Yes, sir; if he is caught at it. Some of them do it. I have known of many dismissals from the service because the man was attempting to make an honest dollar while his services were not required by the Government and when he was perfectly willing to report to the Government when called upon.

Mr. RANDELL. Is the present law simply that he shall not accept employment from any one else?

Mr. JOHNSON. That he shall not engage in any other business.

Mr. COCKRAN. Do you know of an instance where a man was dismissed?

Mr. JOHNSON. There are a number of them. I know of the case of John C. Talbert, who was dismissed from the service upon the ground of working his own farm. It went before the Civil Service Commission and that man lost his position in the Government service.

The CHAIRMAN. Here is the law:

SEC. 3153. That there shall be appointed by the Secretary of the Treasury such number of internal revenue storekeepers as may be necessary, who shall each receive such compensation, not exceeding \$4 a day, to be paid monthly by the United States, as may be determined by the Commissioner of Internal Revenue. No storekeeper shall be engaged in any other business while in the service of the United States, without the written permission of the Commissioner of Internal Revenue. Every storekeeper shall take an oath faithfully to perform the duties of his office, and shall give a bond, to be approved by the Commissioner of Internal Revenue, for the faithful discharge of his duties, in such form and for such amount as the Commissioner may prescribe.

Mr. COCKRAN. That is different.

Mr. JOHNSON. I do not think there is any difference.

Mr. HILL. Do you consider that that covers the whole time?

Mr. JOHNSON. As long as he carries the commission he is in the service.

Mr. GAINES. Does not the Commissioner of Internal Revenue, if requested, grant the permission to engage in other business?

Mr. JOHNSON. He may or he may not.

Mr. GAINES. What is the general practice?

Mr. JOHNSON. I have known cases where they refused to grant the permission.

Mr. SHERLEY. And if it is granted those men are never assigned to duty as storekeepers afterwards.

Mr. JOHNSON. That is usually the case.

Mr. COCKRAN. Do these storekeepers and storekeeper-gaugers get no vacation at all?

Mr. JOHNSON. None whatever, and as I stated they are the only people in the service who do not get leave.

Mr. GRIGGS. Why not give them thirty days leave like the other employees?

Mr. JOHNSON. I am afraid that I could not get it passed.

Mr. LONGWORTH. How long do they actually work?

Mr. JOHNSON. Nine months, some twelve, and others two. It all depends on the favoritism of the collector of internal revenue who assigns them.

Mr. LONGWORTH. Some of them actually work only two months?

Mr. JOHNSON. Yes, sir; plenty of them.

Mr. HILL. Why do they need any vacation?

Mr. JOHNSON. The vacation is intended more particularly for those who enjoy the good will of the collector and who get continued assignments, that they may have a vacation and the other fellows who are not so much favored can come in and get some additional work.^a

STATEMENT OF HON. JULIUS KAHN, A MEMBER OF CONGRESS FROM THE STATE OF CALIFORNIA.

Mr. KAHN. The first bill which I desire to call your attention to is H. R. 11740, which seeks to amend section 2746 of the Revised Statutes. Up to 1877 the salary allowed the weigher at San Francisco was \$2,500 per annum, but in that year the statute was amended. The salary was continued to all other officers in the customs and revenue services, but the weigher was dropped out. For what reason, nobody seems to know. My own opinion is that it was done so as to equalize the salaries that were being paid in some of the other ports. Since 1877 the work of the weigher at San Francisco has about doubled and the cost of living, according to the collector of customs at that port, within the past two or three years has increased fully 50 per cent, and so I ask the committee to kindly restore the words "and weighers" in Section 2746.

Mr. BONYNGE. What salary does that contemplate?

Mr. KAHN. \$2,500.

Mr. BONYNGE. What salary does the weigher get now?

Mr. KAHN. \$2,000. I believe there are five weighers in the port of New York. I understand that the weigher at the port of San Francisco does as much or more work than any one of the five, and the salaries at the port of New York are \$2,500 per annum.

Mr. DALZELL. How many weighers are there?

Mr. KAHN. There is only one at San Francisco.

Mr. DALZELL. How many are there in the customs service.

Mr. KAHN. I can not say. The data I have indicates about 12 or 14.

Mr. BONYNGE. The weighers at New York get \$2,500?

Mr. KAHN. Yes, sir; and there are five of them.

Mr. BONYNGE. What is the compensation at San Francisco?

Mr. KAHN. \$2,000.

Mr. BONYNGE. Are the salaries at New York fixed by statute?

Mr. KAHN. Yes, sir.

Mr. BONYNGE. And the salary at San Francisco is not fixed by statute?

Mr. KAHN. Yes, it is; at \$2,000. I may say in this connection that the collector of customs at San Francisco recommended an in-

^a For statement of Mr. Johnson on H. R. 17310 and H. R. 17308, see pages 140-143.

crease for the weigher and the Department here was favorably inclined to grant it, but in looking the matter up they found that it was a statutory provision and therefore they could not take any action.

Mr. COCKRAN. The salary had been \$2,500?

Mr. KAHN. Yes, sir; up to 1877. I am simply seeking to add the two words that were dropped out at that time, "and weighers."

Mr. BONYNGE. You will have to amend some other statute besides that?

Mr. KAHN. No, sir. Section 2746 reads:

An additional compensation of twenty-five per centum shall be continued to appraisers, deputy collectors, deputy surveyors, and deputy naval officers at the port of San Francisco.

And I propose to amend it to read:

An additional compensation of twenty-five per centum shall be continued to appraisers, deputy collectors, deputy surveyors, deputy naval officers, and weighers at the port of San Francisco.

The CHAIRMAN. Have you any information why the words were dropped out?

Mr. KAHN. No, sir. We can not ascertain why they were dropped out. It was done just as an effort was made a few years ago in the House to decrease the salaries of some of the officials in the sub-treasury at San Francisco. The Members of the California delegation did not know anything about it.

Mr. HILL. Have you any information as to the work required of the weigher thirty years ago and now?

Mr. KAHN. Yes, sir; it has almost doubled.

Mr. COCKRAN. It is almost double now?

Mr. KAHN. Yes, sir.

Mr. COCKRAN. Has the cost of living doubled?

Mr. KAHN. Yes, sir; about 50 per cent according to a recommendation made by the collector at San Francisco. He sent a letter to the Department a year ago recommending the increase of a number of clerks, and among others the weighers, but when the Department here undertook to look it up they found that the salary was fixed by statute and they could not do anything. The clerks whose salary they had a right to fix were increased.

Mr. GAINES. What are the duties of the weigher?

Mr. KAHN. As the merchandise is brought in upon a vessel it is taken to different scales in different parts of the city and there it is weighed and sent to the customs house, appraiser's stores, etc. The weigher has supervision of probably thirty or forty assistants. He has to go to the different places where vessels are being discharged and look after his men. There are also a great many laborers under him.

In addition to that bill, Mr. Chairman, I have also bills H. R. 18118, 18119, and 18205, and 13093.

Bill H. R. 13093 provides for the increase of the compensation of inspectors at the port of San Francisco to \$5 per day. They are now receiving \$4 per day. Unless one is familiar with the conditions at San Francisco he can hardly realize how great the increased cost of living has been during the last three or four years. I can give specific instances where people who were paying a rental of \$25 a

month have been raised to \$75 and \$80 per month. Rents have increased abnormally. San Francisco has never been a very expensive city to live in, so far as eatables are concerned. We have a good market and a very reasonable market. The cost of clothing is exceedingly high and rents have gone up abnormally.

Mr. HILL. The rents will come down as the city is being rebuilt?

Mr. KAHN. Not very much, Mr. Hill. In fact, the demand for houses is very great, and the rents are just the same as they were a year or a year and a half ago. There are very few vacant houses there, and as quickly as a house is put up it is occupied. In fact, a great many of the people of San Francisco have had to go to the cities around the bay, because they could not get habitation in the city. Take the question of fuel; I pay in my own home for coal to heat my house \$17 a ton.

Mr. COCKRAN. You do not need much coal?

Mr. KAHN. No, sir; we do not.

Mr. COCKRAN. You use it principally for cooking?

Mr. KAHN. No; that is for heating. Cooking coal is a little less expensive, about \$10 a ton. As I say, clothing and haberdashery and those things are very high.

Mr. RANDELL. Do you use anthracite coal?

Mr. KAHN. Yes, sir; for heating we do. We pay that price at my own home, and so I know. Of course, we have no coal in California.

Mr. COCKRAN. Where does the coal come from?

Mr. KAHN. From British Columbia, some of it from the State of Washington, and a great deal from Australia.

Mr. BONYNGE. Do you not get coal from Colorado?

Mr. KAHN. No, sir; not very much.

The other bills that I have before me fix the compensation of gaugers, storekeeper-gaugers, and storekeepers at the port of San Francisco. They receive \$4 a day when employed. There is a period, I believe, of about three months when they do not do very much, in fact, I think, very little, and they are off a part of the time. We ask that their wages be increased \$1 a day by reason of the great increase in the cost of living.

I have also a bill to fix the compensation of assistant weighers. They receive \$3 a day, and for the reasons I have advanced with respect to the other bills we ask that their salaries be increased to \$4 a day. The same is true of the night inspectors at San Francisco. In regard to the night inspectors at San Francisco, while it is true that a night inspector is generally nothing more than a good watchman, the conditions are peculiar. We have the oriental there, and there is a duty of \$10 a pound on opium. There is a great deal of effort being made constantly to smuggle in that commodity, and not only the night inspectors, but the day inspectors, the men who examine the ships when they come in, examine the cargoes, have a great deal of trouble. They have found opium in broom handles, in the heels of shoes, and they have found it in a great many places. It is not unusual when a steamer comes into the port of San Francisco from the Orient to see the customs inspectors board the vessel with great long rods and candles. They go into all kinds of out-of-the-way places and dig for opium, and they frequently find it.

The CHAIRMAN. You really think that they have as hard a time as the night inspectors at New York, where two-thirds of the revenue is collected?

Mr. KAHN. Yes, sir; I think so.

Mr. COCKRAN. How much would this raise their compensation?

Mr. KAHN. One dollar a day.

Mr. COCKRAN. How much are they getting now?

Mr. KAHN. Three dollars a day. Our day inspectors are getting \$4 a day.

Mr. Chairman, Mr. Hayes is here and desires to say a few words.

**STATEMENT OF HON. E. A. HAYES, A MEMBER OF CONGRESS
FROM THE STATE OF CALIFORNIA.**

Mr. HAYES. I want to say that this matter of the weighers was called to the attention of the collector of the port nearly a year ago, and he made a recommendation to the Department for the increase of the salaries of several of the employees, among the rest the weighers, supposing that, they having been taken out of the statute, it was not a statutory salary, and that it would be within the power of the Department to make the increase. All the rest were increased in accordance with his recommendation, and he was surprised that the weighers were not. They were not increased for the reason, it was discovered, that it was a statutory salary. I think the committee understands that the increase asked for the inspectors only puts them on the same basis as the inspectors at New York, and I think it is not necessary to urge that the cost of living in San Francisco is very much greater. In fact, almost everything the people in San Francisco consume they have to pay freight on from the East, and that adds in some cases 25 per cent and sometimes more to the cost of the article. In addition to the things that Mr. Kahn mentioned everything is very much higher in San Francisco than it is at any other place in the United States, this side of the Rocky Mountains at least. It seems to me that we are only asking for simple justice when we ask that the inspectors and assistant weighers at San Francisco be put exactly on the same basis as those in New York. That is all we are asking.

Thereupon, the committee adjourned until Tuesday, March 17, 1908.

COMMITTEE ON WAYS AND MEANS,
Tuesday, March 17, 1908.

The committee met at 10.30 a. m., with Hon. Sereno E. Payne in the chair.

Present: The chairman and Messrs. Dalzell, McCall, Boutell, Needham, Fordney, Gaines, Bonyng, Longworth, Clark, Granger, and Randell.

The CHAIRMAN. You may proceed, Mr. Pujó.

**STATEMENT OF HON. ARSÈNE P. PUJO, A MEMBER OF CONGRESS
FROM THE STATE OF LOUISIANA.**

Mr. PUJO. Mr. Chairman and gentlemen of the committee, because of the temporary absence of Judge Davey, of New Orleans, and the

death of our colleague, Mr. Meyer, of that city, Mr. Broussard and I have come here in the interest of two bills which we think affect the commerce of the First and Second Louisiana districts, embracing principally the city of New Orleans.

Senate bill 4066 was passed and referred to this committee. The object of the bill is to increase the compensation of inspectors of customs at various ports designated to a maximum not to exceed \$6 a day. The ports mentioned in the bill are New York, Chicago, Boston, Philadelphia, and San Francisco. The bill introduced by Judge Davey (H. R. 17990) seeks to "increase the compensation of the inspectors of customs at the ports of New York, Boston, Baltimore, Philadelphia, New Orleans, Galveston, Chicago, and San Francisco, and at such other ports as he may deem advisable, by adding to their present compensation a sufficient sum to make their salary \$6 per diem, the same to be in effect on or after its passage."

The difference between the two bills, beyond the naming of additional ports, is that the Senate bill allows and vests discretion in the Secretary of the Treasury to increase the salary to not exceeding \$6 per day, whereas the Davey bill is, as I gather it, mandatory and fixes it at \$6 per day.

By reference to the report of the Secretary of the Treasury for 1907 you will find on page 40 that New Orleans is the sixth port in commercial importance in the United States. They rank as follows: New York, giving the duties collected, \$222,782,650; Boston, \$28,177,079; Philadelphia, \$21,153,995; Chicago, \$10,162,952; San Francisco, \$10,150,066, and New Orleans, \$8,130,923.

In the same report of the Secretary of the Treasury for 1907 there is a table showing the comparative cost of collection at the various ports, to be found on pages 106, 107, and 108, from which table I have made these extracts: Baltimore, 5.3 cents; Boston, 3 cents; Chicago, 2.6 cents; Galveston, 10.5 cents; New Orleans, 4 cents; New York, 1.8 cents; Philadelphia, 2.6 cents, and San Francisco, 4.9 cents.

We are furnished information by the Department to the effect that at the port of New Orleans there are a chief inspector at \$4 a day, one inspector at \$4 a day, 52 inspectors at \$3.50 a day each, and 23 night inspectors at \$2.75 a day each.

Briefly and in behalf of the proponent of the bill, who is not here, we merely want to emphasize this fact, one you are all familiar with, that the cost of living has increased greatly everywhere, and that the Congress of the United States itself—the Members who did not vote, however, accepting the salary which has been voted—has increased our own salaries 50 per cent, and it occurs to us that where the labor is arduous, as it evidently is, and the importance of the port of New Orleans bearing the relation that it does numerically, being the sixth port in importance in the United States, and there being over \$8,000,000 collected there a year, that the inspectors should receive a larger salary, and if there is an increase of salary that it should be commensurate with its rank and importance; that is, we think \$6 a day for the character of the work ought to commend itself to the favorable consideration of this committee, and if it becomes the policy of the committee to make any increase of salary, then that New Orleans should be included in the list, and that it should be made, as suggested in the Davey bill, mandatory upon the Secretary of the Treasury and not discretionary.

With these remarks I submit the matter to the further consideration of your committee.

Mr. CLARK. How much are the inspectors getting there now?

Mr. PUJO. Two inspectors are getting \$4 a day each, and there are 52 inspectors at \$3.50 a day each, and 23 night inspectors at \$2.75 a day each.

STATEMENT OF HON. ROBERT F. BROUSSARD, A MEMBER OF CONGRESS FROM THE STATE OF LOUISIANA.

Mr. BROUSSARD. Mr. Chairman and gentlemen of the committee, I merely want to supplement what Mr. Pujó has stated from my actual experience in reference to the work in the city of New Orleans. I was a day inspector for two or two and a half years in the city of New Orleans, at which time the inspectors were receiving \$3 a day. I see that a great majority of them are now receiving \$3.50 a day. The work of an inspector in all of the leading ports of the country is such as to warrant a much larger salary than he is receiving. The inspector in New Orleans, as in other ports, must be at his work at 6 o'clock in the morning and remain there until 6 o'clock in the evening. He has twelve hours of steady work. He must provide for his meals as best he can. There is a Government regulation permitting him to get his meals aboard ship, which he must pay for. The port of New Orleans is some 30 miles in length on the river front, and I have often been compelled, when assigned to duty at Southport, Westwego, Algiers, or Chalmette, to leave my room at 3 o'clock in the morning in order to reach my work at 6 o'clock and relieve the night inspector, and the same in returning after 6 o'clock. When the work is "knocked off" the hatches must be sealed with the Government imprint and the seals put on, three or four of them, and the inspector usually gets back to his room at 10 o'clock. If he is assigned anywhere beyond a radius of 15 or 20 blocks from the custom-house, there is the expense connected with going to and returning from the various points, particularly five or six of the main places, where the landings are made. For instance, all goods going on the Texas and Pacific Railroad are disembarked at Gretna, and a man living on the New Orleans side of the river must not only pay car fare to the river, but he must pay passage across the river to his work, and must necessarily start very early in order to get to the ship at 6 o'clock.

The inspector is required to wear a uniform, which he has to purchase himself, and he has to keep it in fairly respectable condition. His work is on the levee front, where there is considerable dirt, soot, and steam, and uncleanness of all kinds, and where it is very difficult for him to keep the uniform clean, and it is only a very short time when he must renew it. He is required to furnish a bond. He is required to pass a very stringent examination. There is not a stevedore or a man who works on the levee front who does not receive twice the pay he gets, and who only works one-half the time that an inspector works.

An inspector receives \$3.50 a day, and a stevedore or longshoreman will get \$6 a day, and he only puts in about six hours' work, as against twelve solid hours put in by the inspector. A night inspector is not of course, properly speaking, an inspector; he is merely a watchman.

He receives the ship sealed, and sees that the seal is not broken until he is relieved in the morning by the man who is to take charge of the main work of unloading the ship. I think that the inspectors not only in New Orleans, but in any of the ports, New York, Chicago, and San Francisco, who are required not only to work twelve hours, but in many instances beyond the limit of those hours into the evening, should receive adequate salaries. Where baggage comes in on a ship which lands after dark, all of that work has to be done in the day and is not paid for. Of course, if any goods are disembarked from a ship after 6 o'clock there is payment for that work, and that money usually goes into a common fund that is distributed at the end of the month among the inspectors per capita.

The necessary expenses connected with these positions are almost equivalent to the pay the inspectors receive. In the city of New Orleans an inspector has to purchase three uniforms, costing from \$25 to \$40 apiece a year; he has to pay his passage for distances of 12 or 15 miles from the custom-house; he has to provide for his meals during the twelve hours because he is not permitted to return, and could not if he be permitted, because he must remain actively on duty and watch everything that is disembarked, watching those goods going upon the railroads and those not going upon the railroads until delivered to the importer. He must be perpetually on the ground. I think that \$6 a day at any of these ports where the man is required to be at work all these hours, and required to work Sunday, and required to work after 6 o'clock in the evening, is not any too much compensation.

MR. CLARK. When were their salaries raised?

MR. BROUSSARD. Since I left the customs service they have been raised from \$3 to \$3.50 a day. The Secretary of the Treasury has the discretion to increase their salaries.

MR. BONYNGE. Under the law now the Secretary has that discretion?

MR. BROUSSARD. Yes, sir; to \$5. Two inspectors receive \$4 a day, and the balance \$3.50 a day.

MR. GAINES. The stevedores get more pay than the inspectors?

MR. BROUSSARD. Yes, sir. They work an hour on and an hour off, and they make \$6 to \$8 a day. There is not a man connected with the discharge of a ship who is not responsible at all and is not under bond who does not get at least twice as much as an inspector.

MR. NEEDHAM. The only place where the inspectors are paid \$5 is at the port of New York?

MR. BROUSSARD. They add \$1 in New York for the expense of getting from the custom-house to the pier.

MR. NEEDHAM. Has the Secretary of the Treasury now the authority to fix the compensation?

MR. BROUSSARD. Yes, sir.

MR. DALZELL. That only applies to the port of New York.

MR. BROUSSARD. I think the inspectors should receive \$6 a day in all these ports.

MR. GAINES. Regarding the statement made as to the comparative cost of collection at these ports, please tell us what causes the difference.

MR. BROUSSARD. The port at New Orleans embraces nearly half of the United States. Pittsburg is in the port of New Orleans, as

are also Paducah and Louisville, and every town on any branch of the Mississippi River is in the port of New Orleans. These reports do not show the actual work at the port of New Orleans. All goods in bond which are transferred from the vessel to the car and go to Pittsburg or Louisville have to be handled by the local inspector. The freight is discharged and put in a car and the car is sealed, and for that the port gets no credit, but it is charged to the expense of the port of New Orleans. So with the interior ports. That is also true of New York; the expenses are incurred at the port of New York, but the goods are delivered elsewhere. At New Orleans, if you will notice this report of the Secretary of the Treasury, there were \$3,770,000 of goods free of duty and \$17,360,000 of goods upon which duty was paid, which came to that port going to what are known as interior ports—Chattanooga, Cincinnati, Columbus, Pittsburg, Des Moines, Dubuque, etc. These goods all have to be handled by the inspectors; they not only have to be taken off the ships, but they have to be put in cars and the cars sealed and sent in bond. All that work has to be done by the inspectors. New York receives goods in transit for a limited area, but the port of New Orleans takes in the Mississippi Valley, and all that business has got to come in transit and is charged to the port of New Orleans. That is what makes the cost 4 per cent, as against 2 per cent or a little less than 2 per cent in New York City. (Thereupon the hearing closed.)

ADDITIONAL STATEMENT OF MR. CHAS. P. BATTELLE.

WASHINGTON, D. C., *March 9, 1908.*

DEAR SIR: After listening to the report of the collector of the port of New York, I desire to submit the following statement to be presented to the Committee on Ways and Means at hearing on bills to increase salaries of customs employees.

The day inspectors at port of Boston are required by written orders to report for duty not later than 7 a. m., relieving a night inspector, and are relieved at 6 p. m. by a night inspector. They are on duty daily from 7 a. m. till 6 p. m., without provision under law for noon meal, which has to be taken when opportunity allows, making a day of eleven hours, besides the work before 7 a. m. and after 6 p. m., frequently upon passengers' baggage. The collector of New York recommended the passage of the higher grade of officers' bills before the inspectors' bills on account of those officers not having had an increase for more than forty years. The inspectors of the port of Boston have had no increase in pay for more than forty years, and I can not admit that any officers should have a preference over the Boston inspectors. I recognize the importance of the port of New York and commend the loyalty of customs officers to their home ports, but I contend and can prove conclusively that the amount of work performed, the ability required, the expense of living, and that every condition regarding the inspectors at Boston are identically the same as in New York except the compensation. Senate bill 4066 is strictly a permissive bill controlled absolutely by the Secretary of the Treasury, as has been the law since 1864. The Secretary of the Treasury during that time has not increased to the maximum in but a few of the larger ports. Why should not the confidence reposed in him continue?

Yours, very respectfully,

CHAS. P. BATTELLE,

HON. S. W. MCCALL, M. C.

Committee on Ways and Means.

HOUSE OF REPRESENTATIVES,
Washington, D. C., March 11, 1908.

DEAR MR. CHAIRMAN: I respectfully submit the inclosed in behalf of the night inspectors of the port of Philadelphia, who feel they have a just reason for asking an equalization of compensation.

Very truly, yours,

J. HAMPTON MOORE.

HON. SERENO E. PAYNE,
Chairman Committee on Ways and Means,
Washington.

PORT OF PHILADELPHIA, ——— ———, 1908.

SIR: The members of the force of night inspectors of the port of Philadelphia respectfully ask consideration of the following facts in connection with their request for an increase of compensation or a reduction in the number of hours of duty.

The men comprising this force are continuously on duty from 6 p. m. to 7 a. m., thirteen hours daily, and by reason of the distance of many of the points of duty from their homes two and three hours additional are consumed in going to and from their charges, leaving them but eight or nine hours for sleep and recreation.

As no provision is made for Sundays or holidays, as is the case in other branches of the service, they are actually on duty three hundred and sixty-five days each year, excepting only the time allowed on official leave of absence.

In New York and other ports the hours of duty are but one-half, working as they do from 6 to 11 p. m. one night and from 11 p. m. to 7 a. m. the next. Even there provision is made so that the men alternately get the benefit of holidays.

In view of the responsible duties of the position we feel that the qualifications required in those comprising the force are not properly compensated by a salary amounting to about 23 cents per hour, less than is paid the laborers in the service.

We respectfully submit the foregoing in the belief that your knowledge of our services will enable you to suggest a means for ameliorating these conditions.

Respectfully,

**BRIEF AND STATEMENT SUBMITTED BY HON. CHAS. T. DUNWELL
AND OTHERS IN SUPPORT OF BILLS FOR INCREASE OF THE
SALARIES OF ASSISTANT APPRAISERS OF MERCHANDISE,
DEPUTY COLLECTORS, DEPUTY SURVEYORS, AND DEPUTY
NAVAL OFFICER, ASSISTANT WEIGHERS, ASSISTANT GAUGERS,
NIGHT INSPECTORS, WAREHOUSE LABORERS, AND WATCHMEN
IN THE CUSTOMS SERVICE OF THE PORT OF NEW YORK.**

[See statement of Mr. Bennet, page 108.]

A number of bills have been introduced by Representatives in Congress for the purpose of increasing the salaries of the above-named officers and employees in the customs service at the port of New York and elsewhere. The bills known as the Sherman bills are general in character, and give authority to the Secretary of the Treasury to increase the pay, in his discretion, to a certain amount, at all ports. The bills introduced by Messrs. Dunwell, Bennet, and Calder apply only to the port of New York.

We do not oppose the Sherman bills if, in the judgment of the committee and the Treasury Department, they are better calculated to increase the efficiency of the service than are the bills applying solely

to the port of New York. We do not pretend to be familiar with the conditions prevailing at other ports, and therefore this statement and brief will relate solely to conditions existing at the port of New York and to the necessity of an increase in the compensation of the above-named officers and employees at that port. However, it must be borne in mind that the Sherman bills allow the Secretary of the Treasury, in his discretion, to increase the salaries of only a limited class of officials at the port of New York, and would not in any way change existing law as to the compensation of assistant weighers, night inspectors, assistant gaugers, warehouse laborers, and watchmen. Therefore, if the Sherman bills are reported by the committee they should be accompanied by a favorable report upon the bills introduced by Mr. Dunwell, to fix the compensation of assistant weighers, night inspectors, and assistant gaugers, and known respectively as House bills No. 16632, No. 16636, and No. 16635, and also the bill introduced by Mr. Bennet, to increase the pay of warehouse laborers, known as H. R. 9162, and the bills introduced by Mr. Calder, fixing the compensation of watchmen in the customs service, known as H. R. 16869.

We believe there is little difference of opinion as to the necessity of increasing the compensation of the officials named in the Sherman bills, in order to maintain the efficiency of the service. The Treasury Department is clearly of the opinion that the salaries of the class of officials named in the Sherman bills must be increased, in order to retain competent men in the service. Men fitted to perform the duties of these positions can now readily secure positions with private concerns at a larger compensation than that paid by the Government. So far as deputy collectors, deputy surveyors, and deputy naval officer, and the assistant appraisers of merchandise at the port of New York are concerned, the desired end may be accomplished either under the Sherman bill, H. R. 11709, or under H. R. 16631 and 16634, introduced by Mr. Dunwell.

As bearing upon the question of the propriety and necessity of increasing the compensation of the officials and customs employees, included in the bills introduced by Messrs. Sherman, Dunwell, Bennet, and Calder, some statements as to the enormous increase in the business transacted at the port of New York and the relative increase of the force of officials and employees may be pertinent at this time.

The imports at the port of New York in 1906 amounted to \$734,480,823, an amount exceeding the total imports of the United States in 1896 by \$45,243,851. Of the trans-Atlantic steamers at present in commission, those built from 1900 to 1907 carry very nearly double the tonnage of all ships built prior to 1900. Thirty-seven of the regular European liners now in commission were built prior to 1900. The total gross tonnage of these vessels is 389,460 tons. Fifty-one of the regular liners built since 1900, now in commission, carry a gross tonnage of 752,628 tons.

The average length of all liners now in commission and which were built prior to 1900 is 533 feet, while the average length of those built since the beginning of 1900 is 586 feet. That makes a difference of 53 feet on each ship built since 1900 on the average, or, in other words, an increase of 10 per cent in the length. In addition to the above, there has been an enormous increase in the passenger service and in the number of both freight and passenger vessels entering the port of New York.

There has not, however, been a corresponding increase in the number of officials and employees to handle this vast increase in business. On January 1, 1882, there were 10 deputy collectors at the port of New York receiving salaries of \$3,000 per annum each, making \$30,000. There was one deputy surveyor receiving \$2,500 per annum and 320 day inspectors receiving \$4 per day each. Thirty thousand dollars was the pay of the deputy collectors and \$2,500 was the pay of the deputy surveyor. Four hundred and sixty thousand two hundred dollars was paid to the 320 inspectors at \$4 per day, and there were 125 night inspectors, at \$3 per day, receiving \$136,875. So that the total paid for the above service was \$629,575.

On January 1, 1907, twenty-five years afterwards, there were seven deputy collectors (3 less than there were in 1882), receiving the same compensation, \$3,000 per annum. They received a total of \$21,000. There were 4 deputy surveyors instead of 1. Their number was increased by 3 and their pay was still \$2,500 per annum, with a total of \$10,000. The day inspectors were increased \$1 a day some few years ago. There were still 320 of them, the same as twenty-five years ago, and they received a total compensation of \$602,250. The night inspectors numbered 136, an increase of eleven, and they received the same compensation, to wit, \$3 per day, or a total of \$148,920.

According to the most reliable authority, seven-tenths of all the merchandise coming into the United States now enters the port of New York. In other words, only three-tenths come to other ports. It costs the Government \$0.029 to collect a dollar of its revenue in the entire country, while at the port of New York it costs the Government only \$0.018 to collect a dollar of its import revenue. In connection with the cost of \$0.018 to collect a dollar at the port of New York, it is interesting to observe the cost of collection of a dollar at the other principal ports of the United States, which is as follows:

Boston	\$0.03
Philadelphia	.028
Chicago	.025
San Francisco	.064
New Orleans	.046
Baltimore	.057
St. Louis	.031
Tampa	.027
Detroit	.051

The above furnish very interesting figures, and clearly indicate that the Government can well afford to increase the expense of collecting revenue at the port of New York. There is no port of the United States where it now costs so little to collect a dollar of revenue as at the port of New York, and no port which covers so large a territory. The port limits include both banks of the Hudson, as far North as and including the City of Yonkers, both banks of the East River as far north as the boundary line of New York City, all the shore of Staten Island, all the Kill Von Kull, all the lower bay outside of the line drawn from about Hoffman Island to the shipping channel of Sandy Hook. This embraces about 404 miles of water-front.

ASSISTANT GAUGERS AND ASSISTANT WEIGHERS IN THE CUSTOMS SERVICE.

[H. R. 16635 and H. R. 16632.]

There has been an enormous increase in the work handled by the fourth division of the surveyor's office, comprising the weighing, gauging, and measuring departments. These departments do the work of ascertaining the quantity of merchandise paying a specific rate of duty, as well as the amount of weight on certain merchandise paying ad valorem rate of duty.

In 1892 there were 622,956 tons of merchandise weighed, 4,211 dock books used in the recording of these weights, and 34,046 returns forwarded to the liquidating bureau of the collector's office.

In 1903 there were 2,219,238 tons of merchandise weighed, 7,782 dock books used, and 68,442 returns forwarded.

During the past year there have been weighed 1,933,115 tons, 6,448 dock books used, and 70,421 returns forwarded.

During the year 1892 there were employed 77 assistant weighers. There are now 109 assistant weighers. These figures include temporary assistant weighers. During this period of time there has been no increase in the pay of assistant weighers.

In 1902, in which year the gauging department was placed under a deputy surveyor and assigned to the fourth division, there were 490,455 packages or casks gauged and 203,800 liquor stamps prepared and placed on barrels and casks.

In 1907 there were 807,733 packages or casks gauged and 422,600 stamps used, and each package or cask must now be measured separately. Each of the stamps mentioned represents a cask of ale, beer, wine, or liquor on which duty has been paid. There are 10 assistant gaugers employed to do this work, and it would therefore require only about \$3,120 per year to grant the increase asked for. Many of the gaugers in the employ of the Internal Revenue Service whose work is not as intricate as gaugers in the Customs Service are now receiving \$5 per day.

It should be taken into consideration that both the assistant weighers and the assistant gaugers do their work out of doors on the docks and are exposed constantly to all kinds of inclement weather. All the assistant weighers and assistant gaugers get their positions by a competitive civil-service examination. They are therefore men who come to the service with considerable preliminary education, as the examination is of such a character as to insure the selection of high-class men for these positions. Their work is really of a responsible and exacting character.

WATCHMEN IN THE CUSTOMS SERVICE.

[H. R. 16869.]

This bill fixes the compensation of watchmen in the Customs Service at the port of New York at \$3 per diem each, or the amount paid the watchmen in this service previous to 1888. It cannot, therefore, be considered an increase in pay. The work performed is different from that of ordinary watchmen, and is almost identical with the service rendered by customs employees receiving a higher rate of compensation.

In view of the importance of the work performed, the fact that for many years the salary asked for was paid by the Government, and because of the increased cost of living in the city of New York, we trust that this bill will receive favorable consideration at the hands of the committee. These men are now receiving \$840 per annum.

DAY AND NIGHT INSPECTORS.

[H. R. 16633.]

With reference to the proposed increase of pay for the day inspectors, we think it sufficient to call the attention of the committee to the testimony of Assistant Secretary Reynolds before your honorable committee and Collector Fowler at the hearings on March 7 and 9, respectively. The reasons assigned by them for increase of the pay of day inspectors are so convincing in their character that they need not be amplified here.

As to the night inspectors, we believe the character of the service which they perform and the laborious and unpleasant features of said service are not fully understood. They are appointed for the purpose of preventing smuggling, they are required to keep a vigilant watch over the vessels, stores, or merchandise, the custody of which is committed to them, and to prevent the landing between sunset and sunrise of any merchandise from any vessel, unless under proper authority and supervision, and to protect the bonded stores and merchandise from unlawful removal. They have the authority to search any person who leaves a vessel, store, or warehouse in their custody and to examine any package which such person may have in his possession under suspicious circumstances. They must satisfy themselves of the right of any man to go on board any vessel to which they are assigned. They must keep strict watch upon any boats that may come near any wharf or vessel, and prevent smuggling by such boats. They may arrest any person caught in the act of smuggling and seize any merchandise landed illegally from any vessel during the night. It will thus be seen how much responsibility is placed in their hands. Their duties are far more exacting and responsible than are the duties of an ordinary watchman, or even a patrolman of the city police force.

A night inspector is rarely assigned to the same charge for more than one night. He works every night, including Sundays and holidays, alternating from a short to a long day at home. One day he reports for duty at the barge office an hour before sunset, and is relieved at about 12 o'clock. The next day he reports at about 11 p. m. and is relieved at 7 a. m., or about that time. The present compensation of the night inspector at the port of New York is that fixed in the year 1881, \$3 per night, notwithstanding the fact that the cost of living in New York City has gradually increased until to-day it is over 40 per cent greater than it was twenty-five years ago, when the present salary was fixed. The customs regulations governing the position of night inspector at the port of New York require that the said officers shall always, when on regular duty, wear the prescribed uniform, and this rule necessitates the purchase of two uniforms each year, a summer and a winter uniform, respectively. The average yearly cost of these uniforms, including hats, is not less than \$50, which is borne by the night inspectors.

The improved water frontage of the port is so vast in extent that to-day the night inspector, in covering his tour of duty as herein-above shown, is compelled to expend for car fare, ferriage, etc., double the amount used for the same position twenty-five years ago. When to these traveling expenses the cost of at least one meal per day is added, the personal expenses of the night inspector will, in the majority of cases, aggregate as much as 70 cents a day. After all the expenses to which the night inspector is subject have been deducted from his salary, he receives only about \$780 per annum.

Attention has been called to the fact that his services are of a more responsible and exacting character than those of a patrolman on the city police force, and yet the patrolmen of the city of New York receive compensation as high as \$1,400 per annum. It will readily be conceded that the amount of revenue derived by the customs from imports is dependent largely upon the success with which efforts to prevent smuggling are attended. Such attempts will invariably be made at night, and the responsibility of preventing smuggling at night rests solely upon the night inspector.

The present rate of compensation of all of the customs officials and employees mentioned in the bills above referred to was fixed many years ago. Too much stress can not be laid upon the oft-repeated fact that in late years the cost of the necessities of life has increased enormously. There is another point in this connection, however, that has to a considerable extent been lost sight of, and that is that not only has the cost of necessities increased, but the standard of living has been very much raised during the past fifty or even twenty-five years. Men must live with some regard for the manner in which those around them live. The luxuries of yesterday become the necessities of to-day. These men are endowed with the pride common to us all, and if one of them lived now as one occupying the same station in life would have lived fifty or even twenty-five years ago, it would cause him the keenest humiliation as well as discontent.

The service should be attractive enough to lead intelligent and ambitious young men to enter with a view of making it a life career, and with the understanding that through their ability and zealous performance of duty they might attain to more responsible work and a better standard of living. This can not be accomplished if the Government fixes rates of compensation that would compel men to live according to the standards of fifty years ago. If this is done, men either will not remain in the Government service or discontent will make them inefficient servants.

Respectfully submitted.

CHARLES T. DUNWELL.
WILLIAM M. CALDER.
CHARLES B. LAW.
G. E. WALDO.
HERBERT PARSONS.
WILLIAM S. BENNET.
WILLIAM W. COCKS.
J. E. ANDRUS.
J. VAN VECHTEN OLCOTT.

**STATEMENT SUBMITTED BY CHICAGO CUSTOMS INSPECTORS'
MUTUAL BENEFIT ASSOCIATION.**

CHICAGO, *March 22, 1908.*

HON. H. S. BOUTELL,

House of Representatives, Washington, D. C.

MY DEAR MR. BOUTELL: I thank you very much for your communication of the 17th instant and for the transcripts of the hearings of March 7, 9, and 14.

I inclose herewith copy of letter of December 2, 1907, to our collector of customs; clipping from the Chicago Journal of April 16, 1907; copy of letter of November 22, 1906, addressed to our collector of customs; copy of letter of June 20, 1906, addressed to Hon. Martin B. Madden by the inspectors at this port; also various newspaper clippings relative to economic conditions. These inclosures are marked, respectively, Exhibits "A," "B," "C," "D," and "E," and from them I believe you may be able to gather some data useful when making your special argument in executive session in behalf of the bill.

Exhibit A speaks for itself.

Data in Exhibit B, as to increased cost of living, is fully applicable to conditions in Chicago to-day. While I have no means at this moment of verifying by official statistics the statements made by the Washington correspondent in said article, I can say that the actual cost of living in Chicago, based upon personal accounts kept from day to day, is equal to, if not higher, than that which obtained immediately preceding the recent financial flurry, at which time it was admitted by Dun's and Bradstreet's to be from 40 to 50 per cent greater than ten years ago. I am not forwarding you copies of reviews of the commercial agencies, such as Bradstreet's and Dun's, which give the official statistics showing the actual increase in cost of commodities, rent, taxes, etc., producing the increase in cost of living (particularly those reports applying to the Chicago territory), as, of course, these are on file at and available to you from the Library of Congress, and perhaps you may already have obtained this information as well as similar official data from the Department of Commerce and Labor or the Census Bureau.

In Exhibits C and D, particularly D, I believe the general conditions under which Chicago inspectors work are covered, and I might add that these conditions are as applicable to-day to customs officers here as on the date the letters were written.

Referring to page 67 of the printed hearings of March 7 and 9, Assistant Secretary Reynolds states that the compensation of inspectors "is now fixed by law at not more than \$4 at all ports outside of New York, and at New York it is \$5. That extra dollar paid at New York is to cover the expenses of meals and travel of inspectors." Referring to this statement, I desire to say that the duties of Chicago inspectors differ from the duties of New York inspectors only in the variety of work. The New York inspector is a "specialist;" they have boarding inspectors, district inspectors, baggage-examination inspectors, drawback inspectors, transfer inspectors, steamboat dock and railroad freight office inspectors—in short, each class of New York inspectors has certain definite duties to perform. On most of

their assignments they work in pairs. The Chicago inspector must be versatile and be able to perform each and every branch of work appertaining to the customs-inspection service, and they work singly.

Owing to the large number of railroad and steamboat lines centering at Chicago, distributing freight to all parts of the country, an inspector here is frequently assigned to outlying railroad yards and junctions throughout the State of Illinois. These assignments are frequent and necessarily materially increase his personal expenses, for which he is not reimbursed, while the New York inspectors, who certainly can not cover larger territory in the discharge of their duties, are now receiving \$5 per day, or \$1 over the Chicago inspectors' compensation.

Although the data in Exhibit E is over a year old, you will find, I believe, that the same general conditions still obtain as noted therein.

If you desire any further data or details as to conditions in the Chicago office, I will be pleased promptly to act upon your advices.

I trust that the inclosed papers and this letter may be of some slight value in your special argument in the executive session of the committee.

Again thanking you for all your kindness, and with assurances of the highest esteem, believe me,

Very sincerely, yours,

DAVID C. BANGS,
Corresponding Secretary.

EXHIBIT A.

CHICAGO, ILL., December 2, 1907.

HON. JOHN C. AMES,

Collector of Customs, Chicago, Ill.

SIR: The undersigned inspectors of customs at this port beg leave to submit to you the following statement relative to the bill now before Congress to raise the present maximum rate of compensation of customs officers, and respectfully ask that you submit this communication to the Secretary of the Treasury with such recommendation in the premises as you may see fit to make.

Briefly stated, the claim of the Chicago inspectors of customs for legislative action on the lines suggested by the attached bill, H. R. 3906, is based on the fact that wages have been increased in every industrial department of labor.

That, as is well known, the cost of living has increased 40 per cent during the past ten years, while the compensation of the customs inspector has remained for years almost at a standstill, and his personal expenses have increased correspondingly with the prevailing general prosperity, in which he does not financially participate.

That, having regard for those reasonable social requirements commensurate with the status of his position, the home environment of a customs inspector must be selected with a view to such fairly suitable surroundings, for which the cost is as high in the city of Chicago as in the city of New York.

The duties of inspectors of customs at Chicago are as onerous and responsible as are those of inspectors at New York. At that port two inspectors work together on assignments. They unload boats by ship's manifests. The customs inspectors at Chicago work singly; they unload bonded sealed cars by exterior and frontier port manifests; and as Chicago is the destination of about 98 per cent of the bonded freight reaching this port, the customs inspector has to arrange the goods for delivery, setting apart what is necessary for the attention of the United States weighers, gaugers, and examiners, giving a certain specified portion of each consignment to the consignee pending final delivery, and sending a certain specified portion of consignments and unclaimed goods by bonded wagons from railroad depots to Government warehouses to be held for payment of duties. He also supplies the United States appraiser of merchandise with the designated packages from each invoice of goods necessary for verifying the dutiable grade of the consignments.

A customs inspector at Chicago submits his detailed distribution account, giving all marks and numbers and descriptive subdivision deliveries of each consignment, and after his final disposition of a shipment the correct calculation of the duties to be assessed is in a large measure based upon his return (or report), which must be absolutely accurate.

Therefore, his efficiency and intelligence must be considered when it is remembered that the number of bonded packages handled by the inspectors of customs at Chicago, without error or delay in delivery, reach into the millions annually.

As early as the Twenty-fourth Congress Mr. Gillet, of New York, from the Committee on Commerce, stated: "The inspectors of customs have been truly called the eyes of the custom-house, and this class of officers ought to be as well paid as any in the service."

The importance and responsibility as to nice judgment, executive ability, and clerical accuracy of an inspector of customs have been recognized at the port of New York, where these officers are now paid \$5 per day and extra compensation for night service, thus placing them in a class superior to those holding merely clerical positions. Chicago customs inspectors receive a maximum of \$4 per day, with no additional compensation for extra duty, except in a few isolated assignments after sunset.

The foregoing is an outline of the more important duties devolving upon a customs officer at this port, and we believe an investigation of the details of the responsibilities of the position will convince Congress that our claim is just and reasonable, and should be recognized.

Respectfully submitted.

F. B. O'Gallagher, J. W. Siler, D. C. Bangs, J. W. Calley, W. D. Gleason, C. H. Harding, G. E. Fifield, B. Johnson, C. A. Baldwin, D. J. Shea, T. F. Lynch, E. E. French, J. B. Gugerty, U. C. Midkiff, H. P. Taylor, A. Stern, D. J. Pratt, M. Corbett, Walter Keefe, Wm. Sippel, H. R. Hall, W. R. Curd, J. C. Gillespie, G. C. Lock, W. J. Tinen, J. E. Drom, J. E. Smith, J. C. Cook, M. H. Sullivan, Carrel Smith, T. J. Finnegan, Garhard Toren, W. E. Diebler,

Customs Inspectors, Port of Chicago, Chicago, Ill.

EXHIBIT B.

[From the Chicago Journal, April 16, 1907.]

WASHINGTON, April 16.

Mr. Kimball, of the International Brotherhood of Electrical Workers, has made a study of the wage question. He expresses what is probably typical in the calling that he follows.

He says that in the Edison Company from 1898 to 1905 the dividends had increased from 7 to 10 per cent. The president's salary had been increased 200 per cent and the salary of higher officials accordingly. But the pay of the man who does the work has remained at the old point.

The cost of their living, as may be proved by official statistics, has advanced 30 to 40 per cent. Statistics are not always convincing. Eleven men, including the superintendent, may be employed in a certain factory. The superintendent may be getting \$5,000 a year, the other men \$500. Then the average would be a little less than \$1,000 each. But if the superintendent has \$5,000, what about the others?

The matter of average wage is a matter of humbug, of deceit, and of folly. If one man gets \$10,000 and three men \$1,000, the average wage seems to be very respectable. I am not going to figure it out. Do it for yourself.

I can not help being reminded, when I see statistics of this sort, of the story of the man who almost destroyed a prominent leader in the Prohibition party by saying that he had at least once stood at the bar and taken whisky and water with him. Of course, upon investigation, it was proved that the water was taken by the prohibitionist leader, the whisky by the other man.

Equally, when you find an average wage limit, you will discover that the \$10,000 salary goes to the owner of the works, his son, or his favorite, and the \$1,000 salary, or less, to the people who actually do the work.

It is one thing to earn a dollar, sometimes a hard thing. It is quite as material a thing to find out what that dollar is going to buy. To-day, according

to the figures collated, it will buy almost as much, not quite, as 55 cents would in 1896.

The two commercial agencies of Dun and Bradstreet make a point of studying the increased cost of living in this country. They also pay some attention to the enormous increase in salary of the heads of corporations, trusts, and general public-utility corporations. But on the point of the increase in the cost of living we find, according to Dunn:

"The price fixed for commodities at wholesale December 1, 1906, was 49 per cent higher than on July 1, 1896."

It will be remembered that 1896 was a lean year for men who worked for wages. But lean as it was, are there any following the same trade who think their wages have been increased 49 per cent since, as, according to this commercial agency, their living expenses have been?

Bradstreet's tables show also an increase of 50 per cent over the prices of ten years ago.

The editor of Moody's Magazine, after a careful investigation of wages and prices, concludes that the increase in the cost of living has been 40 per cent in ten years, and that wages have risen only half as much.

Is this prosperity? Is it prosperity to earn possibly 15 per cent more and to have to pay out 50 per cent more for living? Do these figures justify the statement made long ago in an official book issued by the Republican national committee that wages rose more than prices? They do not. Wages rose for a time; now they are stationary, and in some instances are decreasing. Prices go up and up. What is this prosperity? Is it for the people or the plutocracy?

The amount of money a workingman earns is on its face of great importance to him. He does not stop, as a rule, to think what the purchasing power of that money may be. If every article he has to buy has its cost increased by taxation, or by the taxation of those monopolies called trusts, his dollar is worth now only a fraction of what it should be.

The average man doesn't remember that when a Congress spends \$1,000,000,000 in one session, somebody must pay the cost. Everything he eats, wears, drinks, smokes, is increased in cost thereby.

The final and complete reason why the cost of living of the average man has been increased 50 per cent is due only to the growth of monopoly, fostered by a too liberal tariff and by railroad discrimination.

EXHIBIT C.

CHICAGO, ILL., November 22, 1906.

HON. JOHN C. AMES.

Collector of Customs, Chicago, Ill.

SIR: The undersigned customs inspectors at the port of Chicago beg to submit for your information and consideration the following statement of facts and conditions in support of one of the bills for their relief now in the Committee on Ways and Means, House of Representatives:

There are 32 inspectors under your charge, and the passage of this measure will enable the Secretary of the Treasury, upon your recommendation, to increase their present stipend to the amount specified.

Following is the letter of recommendation written by your predecessor, Hon. William Penn Nixon, and addressed to the Secretary of the Treasury, justifying the claims of your inspectors for additional compensation, and soliciting the indorsement of the Secretary for affirmative Congressional action:

CHICAGO, February 15, 1906.

HON. LESLIE M. SHAW,

Secretary of the Treasury, Washington, D. C.

SIR: At the request of the United States inspectors at this port I inclose you a petition which they have presented to me for an increase in their compensation. They are aware of the fact that such an increase would have to be specially granted by Congress, but they desire me to present their claim to you, trusting you would recommend such increase in case you were called on for your opinion by Representatives in Congress.

I will say in regard to the claims of the inspectors that I believe they do as much work per man as any set of inspectors in the country. They are nearly or quite all of them men of families, and, I may add, men of intelligence and

character. They have an extensive variety of duties and have very few idle moments. The fact is, we have so many places to receive goods in this city, so many railroad depots to be watched and docks to be looked after, that the force is barely large enough in season to do the work properly. They have heretofore, ever since the organization of this port, I believe, been permitted to earn some extra money by working for importers over hours at night. Under the late ruling they are deprived of this. Many of them are familiar with the work of the New York inspectors and believe they are entitled to fully as much as the New York men are, and my opinion is that they really do as much service for the Government.

It is hardly necessary to remind you that the expense of living in a city like Chicago has very largely increased within even a few years. Everybody that patronizes the butcher, the baker, and the grocer fully realizes that, and these men having families find it comes pretty hard on them.

They are anxious to have your approval of their request, and I forward their petition, trusting you can see your way clear to use your influence in their behalf.

Respectfully, yours,

WILLIAM PENN NIXON,
Collector of Customs.

Since the date of the foregoing letter, the work and responsibilities of inspectors at this port have measurably grown; it is admitted that the cost of living has increased, to date, over 40 per cent; the volume of work performed by your inspectors has likewise grown to such an extent that instances are numerous in which they are obliged, in order to keep apace with current business, to work after regular hours without any additional compensation, while the cost to collect each dollar (2.7 per cent) remains the same, and the total revenue from customs duties at this port grows larger and larger. Large corporations all over the country have recognized the wonderful increase of business in that they have recently raised the pay of their employees, being impelled to this action not only because of the recognized increased cost of living but on account of the volume of business transacted and general prosperous conditions, which prosperous conditions are being shared in by the United States Government, as evidenced in the phenomenal increase of customs collections and other national revenues.

But your inspectors still are on the waiting list for that recognition which we believe will be gladly accorded us when you have brought this matter to the attention of the honorable Secretary of the Treasury, and the Secretary is empowered by Congress to grant our request.

We beg to remain, very respectfully, yours,

W. J. Tinen, James W. Calley, Walter Keefe, C. A. Baldwin, H. R. Hall, Jay E. Smith, J. E. Drom, George E. Fifield, T. J. Finnegan, C. Smith, Joseph C. Cook, U. C. Midkiff, Thomas F. Lynch, Francis B. O'Gallagher, Martin O'Brien, B. G. Johnson, William Sippel, A. Stern, W. E. Diebler, D. J. Shea, W. J. Sweeney, J. W. Siler, W. H. Curd, D. J. Pratt, Charles H. Harding, W. D. Gleason, M. H. Sullivan, George F. Lock, D. C. Bangs, D. P. Taylor, John Gillespie, and — Oldfield.

EXHIBIT D.

CHICAGO, June 20, 1906.

HON. MARTIN B. MADDOEN, H. S. BOUTELL, ET AL.,
House of Representatives, Washington, D. C.

GENTLEMEN: We have heard nothing recently regarding the fate of House bill to raise the pay of United States inspectors at Chicago and elsewhere.

Chicago inspectors feel they have been discriminated against in the matter of salaries and expenses as compared with concessions granted similar officers at New York, who were restored to \$5 per day February 1, with \$10 extra for every night of service, while Chicago inspectors, doing quite as much work relatively, are getting but \$4 per diem, and no extra pay for night service.

New York has over 300 inspectors. The restoration of their salaries involved an annual increase of \$119,000. Chicago has 30 inspectors constantly engaged, liable at any time to be assigned to duty at night without extra compensation, and deprived of any and all expense money, except a little car fare, and we feel that when the true status is fully understood, the justice and fairness of grant-

ing the \$1 per day additional will be sufficient reason for Congress to accede to our request, particularly as it would involve an additional expenditure of only about \$11,000, which the increasing customs revenues at this port amply justify.

In economy in cost of collection of the customs revenue Chicago stands next to New York, the former spending 2.7 per cent and the latter 2 per cent out of every dollar of import duties. In other words, there is a difference of but 7 mills in expense of collecting the revenue between the two ports.

As stated, New York inspectors now get \$5 a day and \$10 additional for any overtime, whether it be fifteen minutes or the entire night, in unloading a vessel or car of bonded goods. Further, the overtime of the New York inspectors will amount, in a year, to an average of about \$700 each (which is approximately one-half of the entire salary, \$1,460, of a Chicago inspector); adding to this a salary of \$5 per day brings the income of an inspector there up to over \$2,500 per annum. The Chicago inspector receives \$4 per day only, and no overtime pay, except for a very occasional foreign vessel, and under a ruling of the Department they can be detailed at the request of an importer to unload a vessel, which may take them far into the night, and they do not receive a penny for such work, not even the price of supper. For every night or fraction of a night of such service the New York inspector gets \$10, and this in addition to his salary of \$5 per day. The New York inspector receives an allowance of \$4 per day extra for expenses when assigned to duty out of town. The Chicago inspector receives nothing and is obliged to pay for incidental expenses out of his salary.

As Chicago inspectors do practically the same work (with the exception of examining passengers' baggage), is it not manifest that the Chicago men have been forgotten in the matter of adequate salary, overtime pay, and expense privileges, and are they not entitled to the modest increase to \$5 per day?

A Chicago building laborer now earns about \$3 a day for a day's manual labor, and his style of living is necessarily inexpensive; while a United States customs inspector receives but \$4 per day and must maintain a respectable appearance and uphold the dignity of his position—a very responsible one—calling, as you know, for tact, discretion, business ability, and absolute integrity of character. He is obliged to use both his mental and physical strength, be always alert, exercise good judgment, possess more than ordinary executive ability, at all times faithful and loyal to the Government, and ready to respond to the call of his chief at all hours when necessary, day and night, and yet he gets but \$4 a day and no extra for official work done outside of office hours.

A carpenter in Chicago receives from \$5 to \$6 a day; the bricklayer, plasterer, and other tradesmen about the same. Surely the duties of a United States customs inspector in Chicago call for the exercise of more mental and physical faculties and powers than any of these, to say nothing of the official dignity to be maintained. These considerations aside, however, the fact that recent statistics show the cost of living in Chicago has increased 50 per cent during the past ten years with no commensurate increase in the salaries of United States inspectors, as compared with the actual proportionate increase of pay in outside employment, is an argument which should be a very effective one in the hands of our Illinois Congressmen in their efforts to obtain for us fair and just recognition for honest service rendered.

Are not our Congressmen from Illinois entitled to as much consideration when asking for just treatment of United States inspectors in Chicago as is seemingly willingly extended to the New York Congressmen in their requests for recognition of their constituents?

Respectfully, yours,

DAVID C. BANGS,
Corresponding Secretary.

EXHIBIT E.

[From the Herald, November 17, 1906.]

MANY NOTABLE INCREASES IN PAY ARE REPORTED FROM VARIOUS SECTIONS—BILLION IN SIGHT ON ROADS—EXPRESS COMPANIES, TRACTION LINES, AND INDUSTRIAL CONCERNS IN MOVEMENT.

The nation's prosperity continued to produce results for wage-earners yesterday when several notable advances in pay were reported from different sections of the country, affecting thousands of employees of large corporations.

It is estimated that if the prospective wage increases of railway employees alone are put into effect, they will reach a total, combined with those already granted, of \$1,000,000,000 a year. Switchmen, numbering about 800, in the employ of the Chicago and Alton Road, were elated upon the receipt of the news that the company had decided to increase their pay 4 cents an hour. The Chicago and Alton was not included among the roads which recently increased the pay of their switchmen, and the announcement yesterday was productive of general satisfaction. The increase is retroactive, dating from November 1 last. In Chicago and East St. Louis day foremen have been receiving 35 cents an hour and night foremen 37 cents an hour. The pay for helpers has been 32 and 34 cents an hour, according to the shift on which they worked.

Express companies in line.

The National Express Company fell in line with the American Express Company, and that the other express concerns throughout the country will do likewise is said to be practically certain. The National company's directors at a meeting in New York passed a resolution authorizing an increase of 10 per cent in the salaries of all employees receiving less than \$200 a month and who have been in the service upward of one year without an increase in pay in the twelve months ending November 15 last. This action will benefit a large number of the 4,000 employees of the company.

One hundred and sixty thousand dollars a year is the sum which the Boston Elevated Railway Company has decided to distribute among its employees in the way of wage advances. The Boston Elevated company controls practically all the trolley lines in Boston and vicinity and also the elevated system. The increase will average 10 cents a day for each employee, of whom there are 5,300. It will become effective January 1 next.

According to a dispatch from Cleveland a readjustment of the wages of the Lake Shore Railway employees is to be made. No horizontal increase of a fixed per cent is promised, but increases will be given on a basis of merit and the requirements of the work. The adjustment will extend to all branches of the service. Assistant General Manager Moon said the advance allowed last week to the Lake Shore switchmen was only the beginning of a general revision of wages.

Demand on 45 roads.

A demand for an increase in wages for the 35,000 employees of the 45 railroads west of Chicago will be recommended by the 90 representatives of the men who have been in conference in Kansas City for the last three days. The conference adjourned last night. The proceedings of the conference have been secret, and the amount of the increase and the time when the demand will be made was not made public.

Among employees of Chicago concerns who will share in the prosperity of the companies for which they work are those of the Crane company. In accordance with its usual custom the Crane company will distribute a percentage of its profits this year among all of its employees. The amount last year was about half a million dollars, and, while the figures for this year are not yet available, it was reported yesterday that the total sum this time would approach closely the million mark.

Figures have been compiled for Secretary F. W. Job, of the Chicago Employers' Association, showing that there is a shortage of labor in this country at the present time, reaching a total of between 300,000 and 500,000 men.

It is declared that if the present demand for labor is maintained a necessity will arise for making the requirements for admission to this country by immigrants less rigid.

An advance of 10 per cent of all railway employees, it is said, will not be acceptable to the various labor organizations of the trainmen, other than the switchmen, who already have made an agreement. The brotherhoods of locomotive engineers and firemen and the Order of Railway Conductors are fighting for an eight-hour day, with a basis of mileage to constitute a day's work, and they declare that a 10 per cent advance will increase the difficulty of reaching an agreement.

[From the Herald, November 17, 1906.]

LIVING COST IS HEAVY—EXPENSES ARE DECLARED GREATER THAN WITHIN THE LAST TWO DECADES—MEATS IN THE HIGH LIST—DUN'S REVIEW POINTS TO THE FACT THAT PRICES HAVE LARGELY INCREASED.

It costs more money to live in the present era of prosperity than at any time within the last twenty years. Attention to this fact is called in the index number of Dun's Review, issued last week. The statistics which accompanied the article were prepared from the markets of New York City, that metropolis being taken as significant of conditions throughout the country. Representatives of R. G. Dun's local office said yesterday that the fact was as true of this city as of New York.

"Although we have made no searching analysis of Chicago prices, it would be safe to assert that the cost of living here is greater to-day than at any time during the last two decades or quarter century," said one of Dun's men. "As a matter of fact, I do not believe there is much difference between Chicago and New York in this respect, so far as the average middle-class family is concerned. Some things are more expensive in New York than in Chicago, and vice versa.

Meat is cheaper here.

"Here meat and breadstuffs cost less than in New York, because we are in the center of production. But we have to get our clothing material—our woolens, cotton, silks, and leather—by freight from the seaports, which compels us to pay more for them than the New Yorker. Rents are much higher in New York, but the great mass of the population there live in suburban communities, where the rents are moderate. Only those who can afford to live lavishly pay rent in the congested districts."

Yesterday's market reports showed that the price of breadstuffs was lower than at this time a year ago, but that meats were much higher. Clothing materials, with the exception of cotton, are also above normal. Vegetable products, according to the South Water street merchants, are comparatively low in price, owing to the plentiful crops of the last summer. Rents, the real estate men said, were higher than they were in 1905, when there was an unprecedented rise.

Market is compared.

A comparison of yesterday's market reports with those of November 16, 1905, follows:

		1906.	1905.
Wheat.....	per bushel..	\$0. 73 $\frac{3}{4}$	\$0. 83 $\frac{3}{4}$
Corn.....	do.....	.42 $\frac{1}{2}$	.46 $\frac{1}{2}$
Oats.....	do.....	.34 $\frac{1}{2}$	.30
Pork.....	per barrel..	14.47 $\frac{1}{2}$	12.62
Lard.....	per tierce..	8.60	6.85
Ribs.....	do.....	7.75	6.52
Beef cattle.....	per hundredweight..	7.50	6.55
Hogs.....	do.....	6.40	4.95
Sheep.....	do.....	6.00	5.50
Flour.....	per barrel..	4.30	4.00

The statistics presented in Dun's Review give good reason for the general advance in wages which recently has been made to meet the increased cost of living by a number of large corporations. The article, however, calls attention to the fact that this condition is a symptom of a genuine and not a false prosperity with the following words:

"The most satisfactory feature of the present situation of commodity prices is the unimportant extent to which the advance can be attributed to speculative inflation. A long period of unprecedented commercial activity has given employment to every class of labor, and the total amount distributed in wages was never so great. As a result there is a demand that absorbs all commodities, providing the competitive buying that gives much more permanent strength to the markets than could result from speculative excess."

[From the Record-Herald, November 16, 1906.]

ROADS READY TO ADD HUGE SUM IN WAGES—SYSTEMS OF COUNTRY WILLING TO GRANT 10 PER CENT RAISE TO EMPLOYEES—WOULD REACH \$82,000,000—CONCESSION TO BE OFFERED IN LIEU OF ALL DEMANDS, AND IS PUT UP TO THE WORKERS.

The railroads of the entire country stand ready to accept the standard of wages set by the Pennsylvania and to grant their employees an increase of 10 per cent in lieu of all other demands. The "melon" which the railroads are willing to cut and to distribute among more than 1,296,000 employees would aggregate between \$81,000,000 and \$82,000,000 annually. This sum the roads are ready to give the large army of employees, provided the latter will accept it and cease, for the time being, any further demands for increases in all branches of the railway service.

Several railway magnates have already taken action in the matter and have decided to grant the increase, if the matter can be arranged amicably with their employees. The Reading, which is the only other road beside the Pennsylvania to deal with wages in wholesale fashion, has announced a 10 per cent increase. The Harriman lines have decided to take similar action, and the Burlington and other roads soon will follow.

As viewed in dividends.

The magnitude of the concession to labor is understood when it is stated that the increase will amount to a dividend of nearly 1.4 per cent on all the capital stock of the entire railroad systems of the country, and to nearly 37 per cent of the amount of dividends declared and paid on that stock for the year 1905.

There has not been concerted action on the part of the railroads, but the question of increase in wages has been the subject of discussion in many meetings which have been held among the western presidents and executive officials at Chicago and among the eastern men at New York. In the West as well as in the East it became the unanimous opinion, as soon as the Pennsylvania's action was taken, that the standard thus set should have to be met by all the railroads in the United States. Consequently, although there has not been an open declaration that a 10 per cent increase would be granted, the roads have agreed among themselves that if the labor organizations are satisfied they will follow the Pennsylvania and the Reading with such an advance on the conditions named.

Engineers stand in way.

Some difficulty in carrying out the plan may be met in the case of the engineers, who, on 27 roads, are demanding an increase of nearly 15 per cent. The decision of the roads to ask the Interstate Commerce Commission to arbitrate this question may, however, have an important bearing on the engineers' final decision in the case.

Although they have decided to grant the increase on the conditions named, there are not a few of the railway managements which view the situation with considerable alarm and are afraid that, unless the present phenomenal commercial and industrial conditions continue, this added concession to labor might spell disaster to many railroads. The only hope they have for a happy solution of the problem is that the Interstate Commerce Commission will recognize the fact that unreasonably low rates must eventually mean low wages, and that fair rates will insure fair wages to labor.

Of course the switchmen, who already have received a 10 per cent, in reality a 13 per cent, increase, will be excepted from the employees who are yet to be raised. The apprehension felt by the railroads is readily understood when the full import of the increase is gathered. The voluntary action of the Pennsylvania will bring that company's more than 100,000 employees a total of \$11,700,000 annually in excess of the amount they receive now. The capital stock of the Pennsylvania is \$300,000,000, and the increase, therefore, means giving to the employees a dividend of nearly 4 per cent on the entire capital stock of the company.

Effect in Wall street.

Only a few weeks ago the directors of the Pennsylvania increased the dividend rate of the company by 1 per cent, which amounts to \$3,000,000 annually.

At that time the Wall street organs called attention to the fact and inquired if it was quite safe and wise for the company to increase its rate at this time. Despite this inquiry Wall street received in silence and without protest the announcement that the company had decided to give its employees an additional 4 per cent dividend.

The outstanding stock of the Burlington Road is \$111,000,000, and an increase of 10 per cent to the employees on that road would be equivalent to an addition of about 2.6 per cent to the dividend rate of that company, the actual cost of such an increase being \$2,700,000. The Rock Island Road had this year, after paying fixed charges and a dividend on a portion of the company's stock, a surplus of about \$2,500,000. A 10 per cent increase to the employees of the system would, its officials declare, wipe out this surplus. In this connection it is noted that not a dollar in dividends was paid in 1905 on \$2,696,477,010 of railroad capital stock, and that this amount is 42.53 per cent of the entire capital stock of railroads. The dividend declarations of all roads for 1905 aggregated \$221,941,049, which amounts to a 6.09 per cent dividend on the entire railroad dividend-paying stock.

Railroad president talks.

One railroad president said to a representative of the Record-Herald yesterday.

"Railroads which are fortunately located and which were constructed at low cost would be able to stand the increase without jeopardizing the interests of the stockholders. There are many roads, however, which have small surpluses and whose capital stock does not pay a dividend, or only a small dividend, or which pay a dividend on only a portion of their stock, which might be placed in jeopardy. The management of these roads are apprehensive, and rightly so. I remember, for example, a single storm which cost the Erie Road \$1,500,000. Suppose this should be repeated next year with the Erie's small surplus and after a 10 per cent increase in wages? Suppose, also, there should come a bad crop year, then what would many of the railroads do?"

According to the Interstate Commerce Commission, there were employed by the railroads in 1905 a total of 1,286,121 people, and presumably the number is in excess of this to-day. Of this number, approximately 52,000 were engineers, 55,000 firemen, 39,000 conductors, 106,700 trainmen, 46,000 switch tenders, crossing tenders, and watchmen, 48,700 were engaged in general administration, 415,000 in maintenance of ways and structures, and 566,798 in conducting transportation. During that year this army of employees was paid a total of \$817,598,810, and the 10 per cent increase would make the annual amount of wages about \$900,000,000.

Rests on negotiations.

The purposed increase in wages will not come about except by negotiations between the railroads and their men. The Pennsylvania is in a different position with reference to their employees from any other road except the Reading. The Pennsylvania does not recognize unionized labor; and although it receives committees and hears them, it never raises wages by conference with organized labor. Pennsylvania increases always come voluntarily and in a wholesale fashion, and the company has neither agreements with its employees nor wage schedules. All other roads have agreements and schedules, and as fast as the various committees call on the managements and express their satisfaction with the 10 per cent increase such increase will be made. Before it becomes an actual fact, however, a great deal of negotiation will be necessary to determine what the figures will be in the various branches of labor.

"The increase which the railroads have expressed among themselves a willingness to make," said a western railroad official yesterday, "will be made in recognition of the fact that this is an era of higher prices and increased cost of living. In fact, everything has increased in price except the price of transportation. Rates are seeking a lower level, apparently, owing to agitation and to the machinery which the Government has put in motion, and all the railroads can hope for is that the wage increase and the rate decrease will not continue to the danger point. It is to be remembered that 65 per cent of the cost of operation is wages and 35 per cent is material, both of which are going up."

The wage increase will be further discussed at an informal meeting of the executive officials of western roads to be held here within the next week.

Boost by express company.

Announcement was made in New York yesterday that the wages of all employees of the American Express Company who receive less than \$200 a month would be increased 10 per cent, effective at once. More than 10,000 men are affected, and the increase will amount to upward of \$600,000 a year, it is declared.

It was rumored at Scranton, Pa., that the Lackawanna road and its employees had compromised on a ten-hour day and an 8 per cent increase in wages.

Conferences held in Pittsburg between representatives of the firemen and trainmen and officials of the Pennsylvania road led to a report that the employees had agreed to accept the proffered 10 per cent wage increase as a compromise.

[From the Record-Herald, November 11, 1906.]

\$6,400,000 INCREASE FOR 57,000 WORKERS—ROADS AND AMALGAMATED COPPER GRANT ADVANCES WITH HUGE YEARLY TOTAL—PART OF WIDE PROGRAMME—SWITCHMEN IN EAST AND MINERS AND SMELTERS IN MONTANA SHARE BENEFITS.

Wage increases for 57,000 men, which will amount annually to more than \$6,400,000, were announced yesterday. This is first step in the programme of railroad and industrial corporations all over the country to advance the pay of their employees, intimation of which came from prominent financiers a few days ago. Negotiations are pending between employers and labor unions which are expected to increase these figures very materially before the end of the month.

The greatest concession to employees was made by the railroad lines east of Buffalo and resulted from the conferences which have been going on in Chicago for more than a week. An increase of 4 cents an hour for 30,000 switchmen, with prospects for a similar agreement affecting 15,000 more, was the outcome of a final meeting between representatives of the Brotherhood of Railroad Trainmen and the general managers in the Railway Exchange Building.

H. H. Rogers orders raise.

Dispatches from Butte gave the information that by the orders of Henry H. Rogers, of Standard Oil fame, 12,000 employees in the mines and smelters of the Amalgamated Copper Company in Montana had been granted an increase averaging 25 cents a day, beginning November 15.

Grand Chief Engineer Warren M. Stone, of the International Brotherhood of Locomotive Engineers announced in Cleveland yesterday that employees of 47 railroads west of Chicago had united in a demand upon the roads for higher wages, shorter hours, and different working conditions. Mr. Stone added that the demands would be presented next week, and the roads given till December 10 to make answer. He asserted that the settlement with the switchmen in Chicago had not removed any of the points that are to be put in issue in the demands to be made on the roads west of Chicago.

Peace with switchmen.

The agreement reached in Chicago means not only peace between the railroads and their switchmen, but additional pay for this class of employees, amounting to \$5,500,000 a year. While the Switchmen's Union of North America, with 15,000 switchmen in its ranks, several days ago agreed to accept 3 cents an hour increase and arbitration for any additional amount, it is said to be practically certain that this programme will be abandoned and the 4-cent increase accepted, with arbitration for a larger sum eliminated.

That the settlement effected in Chicago is also a part of a general plan of the railway unions throughout the United States to obtain higher wages for their members, which will reach a total of many millions of dollars, was evidenced last night. Grand Master Morrissey, of the Brotherhood of Railroad Trainmen, left for Kansas City to attend a conference which opens there to-morrow between representatives of the Order of Railway Conductors, the trainmen's organization, and railroad companies traversing a large portion of the country, for the purpose of considering a demand for a wage increase for more than 100,000 railroad trainmen—other than switchmen—and conductors.

The adjustment of the differences between the railroads and switchmen yesterday was the result of conferences that have been in progress for several weeks. Originally a demand for an eight-hour day was made, but this was abandoned and a wage increase of 10 cents an hour substituted. This amount was cut down gradually until 4 cents an hour was accepted by both sides. Under the new scale foremen will be paid 38 cents an hour and helpers 32 cents.

Erie may have strike.

While peace hovered over the councils of the railway managers and representatives of the switchmen, it was announced that the firemen employed by the Erie will vote on a strike to-day as a result of the refusal of the company to grant a demand for a reduction in working hours. John J. Hannahan, grand master of the Brotherhood of Railroad Firemen, informed President F. D. Underwood, of the Erie road, that his response to the demands of the firemen was unsatisfactory, and that a poll of the Erie firemen would be taken at once to determine whether they will strike.

"There are 1,600 locomotive firemen on the Erie in the brotherhood, besides 675 engineers who retain their firemen's cards and are members of the firemen's as well as the engineers' brotherhood," said Grand Master Hannahan. "If the men do not back down, I shall sanction a strike, and all of them, including the engineers, will quit."

According to a dispatch from Reading, Pa., last night the differences between the Philadelphia and Reading Railway and its conductors, engineers, firemen, and trainmen probably will be adjusted.

Close to settlement.

Assistant Grand Chief Hurley, of the Brotherhood of Locomotive Engineers, said that the 800 engineers employed by the Lackawanna road were close to a settlement with President Truesdale, and that in all probability an equally satisfactory outcome will follow on the New York Central, New York, New Haven and Hartford, the Erie, and New Jersey Central.

That labor unions when on strike usually employ a policy of coercion was the assertion made yesterday by Judge McEwen in ruling on a petition for an injunction sought by the Woods Motor Vehicle Company against the Machinists' Union. The union called a strike against the automobile concern some months ago, and since then, it is charged, nonunion employees have been threatened and intimidated. After summing up the evidence the court held that it was not sufficient to warrant an immediate injunction, and allowed the firm until to-morrow to file more affidavits.

[From the Record-Herald, November 8, 1906.]

GIVE INCREASE IN PAY—PENNSYLVANIA RAILROAD AND THE STANDARD OIL COMPANY ANNOUNCE ADVANCES—THOUSANDS ARE TO BENEFIT—ACTION BY FIRST NAMED WILL MEAN AN ADDED OUTLAY OF \$12,000,000 YEARLY.

Thanksgiving turkey will not be regarded as so much of a luxury this year by the employees of at least two great corporations. Yesterday the Pennsylvania Railroad Company announced an increase of 10 per cent in the pay of all its employees who are receiving less than \$200 a month, while the Standard Oil Company made public that it had voluntarily added to the wages of the employees of the Galena signal oil and Eclipse refineries at Franklin, Pa.

The employees of the railroad company who will benefit by the new order number about 185,000, and the total increase will amount to nearly \$12,000,000 annually. Eight hundred men are affected by the Standard's action, though the rate of added pay is not stated.

The action of the Pennsylvania company was taken at a special meeting of the board of directors held in Philadelphia and takes effect December 1, applying to all lines of the company both east and west of Pittsburg. Two reasons were given for the increase. One was that the cost of living had greatly augmented, and the other was that the company had shared, in common with the country generally, in the prosperity of recent years and had been able to make an increased distribution to its shareholders.

Announcement of raise.

The official announcement says:

"The board takes this action by reason of the increased cost of living and the present great prosperity of the country, in which the Pennsylvania Railroad shares, and which has made it possible for the company to make an increased distribution to its shareholders.

"On the Pennsylvania lines east and west of Pittsburg a total of 192,000 men are employed. Of these, on the lines east, the wages of 125,440 will be affected, the total increase amounting to \$702,952 a month. The increase will be of a horizontal character, applying to all cases, even where there has been a readjustment since 1902.

"The present readjustment affects all the employees of the lines east of Pittsburg, with the exception of about 5,000, many of whom are not permanent employees.

Others are to follow.

"The action of the board of directors to-day will be followed by similar action on the part of the boards of companies operating Pennsylvania lines west of Pittsburg, the increase in that territory to apply to more than 60,000 employees, and involving an increased pay roll of between \$3,500,000 and \$4,000,000 annually.

"The increase of wages now ordered applies to a total of about 185,000 men, and involves an increased annual outlay of about \$12,000,000."

Gen. Charles Miller made the announcement in Franklin on behalf of the Standard company. He said the election of the Republican ticket in Pennsylvania had inspired the management of the company with the belief that still greater prosperity was coming and that they desired their employees to share it.

[From the American.]

MEAT PRICES SOAR—LIMIT NOT REACHED—RETAILERS SAY COST TO CONSUMER HAS INCREASED MORE THAN 25 PER CENT.

Meats have increased in price more than 25 per cent in the last two years, but the greater part of the advance has been added within the past three or four weeks. Still the high mark has not been reached, the retail dealers reported yesterday. According to figures given out by several of the largest downtown retail dealers, prices as compared with those of two years ago are:

	Price now.	Price two years ago
	<i>Cents.</i>	<i>Cents.</i>
Club steaks	28	18
Porterhouse steaks	25	18
Sirloin	22	14
Round	16	12
Rib roast	18	14
Pot roast	12	8
Pork chops	14	12
Veal chops	18	14
Shoulder of veal	14	12½
Veal stew	10	8
Veal cutlet	18	16
Leg of mutton	18	10
Mutton chops	22	16
Bacon	25	14
Ham	16	12½
Chickens, dressed hens	16	11-12
Lard	12½	9½

^a And up.

"Meat has been steadily climbing in price for two years," said C. W. Foster, of 209 South Water street, "but during the past few weeks it has increased more than in the past twenty-one months. While the advance is more than 25 per cent on an average, some meats have gone up 50 per cent. Dressed chickens advanced nearly 100 per cent."

**STATEMENT OF HON. JOSEPH V. GRAFF, MEMBER OF CONGRESS
FROM ILLINOIS [REGARDING H. R. 10572].**

Mr. GRAFF. December 19, 1907, I introduced H. R. 10572 to provide for the authorization of payment of gaugers, storekeepers, and storekeeper-gaugers so as to grant to them leave of absence with pay for two and one-half days for each month of thirty days that they were actually assigned to duty.

This bill was drawn in accordance with the recommendations of the Commissioner of Internal Revenue in his report for the fiscal year ending June 30, 1900. The Commissioner also recommended favorable action of the same character upon H. R. 3095 in a letter directed to the Chairman of the Ways and Means Committee, under date of May 7, 1902, as will be seen in House Report No. 3152 made by this committee favorably recommending H. R. 3095 in the second session of the Fifty-seventh Congress on a similar bill drafted on the same lines, introduced by Representative Powers, of Massachusetts.

Subsequently, at the second session of the Fifty-eighth Congress, Representative Powers introduced H. R. 1231, which was referred to this committee, and at the said session this committee made a favorable report on said bill to the House on April 7, 1904 (H. Rept. No. 2316), in which the Secretary of the Treasury recommended the passage of the bill, and the same report contains the favorable recommendation of the then Commissioner of Internal Revenue, under date of January 16, 1904, and refers to the recommendation on pages 93 and 94 of the annual report of the Commissioner of Internal Revenue for 1900, and of the Commissioner of Internal Revenue on page 77 of the annual report of said Commissioner for 1901.

I notice in the testimony before this committee of Mr. H. Giovannoli, chief clerk of the Internal-Revenue Bureau, on page 98 in a hearing of this committee of the present session, March 7 and 9, 1908, the chief clerk states that he does not think the Internal-Revenue Bureau has ever proposed such a measure. He evidently has overlooked the recommendation heretofore referred to by me.

The performance of the duties of these revenue officials call for men of the strictest integrity, of a high degree of intelligence, and men who are also familiar with higher mathematics. They can enter the service only by passing a competitive examination under the civil-service rules, which is exceedingly difficult and could only be passed successfully by one having received instruction and training by way of preparation. These men are not permitted by law to engage in other business without the written permission of the Commissioner of Internal Revenue. (See sec. 3153.) The average period of the year covered by actual work is about nine months, and this time is distributed in a scattering way through the year as the needs of the service require. They are subject to call at any moment and are men of high grade, and the salary paid of \$4 to \$5 per day, does not give them adequate compensation for the great responsibility as well as skill required in the performance of their duties. They are regularly and permanently in the service and must by necessity move to the point where their services are required in order to perform their duties.

The large receipts of the Government, amounting in my own district alone to some \$36,000,000 per year, and the comparatively

small expense of the service and almost perfect regulation and control of the manufacture of spiritous liquors, and the collection of the revenue, warrants the small concession of this leave of absence with pay, based equitably upon the per cent of time during the year when they are employed, is certainly not an unreasonable concession when it is remembered that annual clerks and employees drawing the minimum amount per year as salaries for the lowest grade of labor, enjoy the privilege of thirty days' leave with pay in addition to the sick leave, both of which are denied gaugers, storekeepers, and storekeeper-gaugers performing important and responsible work for the Government.

I reintroduced the bills, similar to the Powers bills in the Fifty-ninth Congress (H. R. 9007), and in the present Congress (H. R. 10572), and respectfully ask the committee to give the same favorable consideration.

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WHISKY BOTTLED IN BOND—FRUIT BRANDY

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

WHISKY BOTTLED IN BOND

March 14, 1908

FRUIT BRANDY

March 17, 1908

WASHINGTON

GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS,

HOUSE OF REPRESENTATIVES.

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WHISKY BOTTLED IN BOND.

BILLS UNDER CONSIDERATION.

[H. R. 17310, Sixtieth Congress, first session.]

A BILL To fix the proof of spirits bottled in bond.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of an Act entitled "An Act to allow the bottling of distilled spirits in bond," approved March third, eighteen hundred and ninety-seven, be so amended as to annul the provisions therein contained which prohibits spirits bottled in bond for domestic use to be so bottled at a less proof than one hundred per centum; and, instead thereof, to permit the bottling of spirits in bond at a proof of not less than ninety per centum, but not more than one hundred per centum; the stamp on the bottle, as well as the branding on the case, shall state the per centum of proof.

SEC. 2. That this Act shall take effect on and after January first, nineteen hundred and nine.

[H. R. 17308, Sixtieth Congress, first session.]

A BILL To permit distilled spirits to be transferred from the original packages into bottles and cases while in distillery bonded warehouse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of January, nineteen hundred and eight, any distilled spirits deposited in bonded warehouse of a distillery having a surveyed daily capacity of as much as or more than twenty bushels of grain, which capacity of twenty bushels is commonly used by the distiller, may, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, be transferred, while yet in the bonded warehouse, from the original package, cask, or barrel into bottles and cases similar to those described in an Act approved March third, eighteen hundred and ninety-seven, entitled "An Act to allow the bottling of distilled spirits in bond," and shall be marked, branded, and stamped as bottles and cases not intended for export are required to be marked, branded, and stamped under said Act, except that such bottles and cases so filled shall be allowed to remain in the bonded warehouse in lieu of the original package from which transferred, and except also that the internal-revenue tax thereon shall not be paid until such cases are finally removed from the warehouse by the distiller, in lots or quantities of not less than ten cases in any one day, upon which removal the tax shall be paid: *Provided, however,* That the limit of time which distilled spirits may remain in bond shall not hereby be extended.

SEC. 2. That where the quantity of distilled spirits bottled and cased under the provisions as herein provided is less than the quantity contained in the original packages from which transferred at the time of the transfer, then the excess left in the original package shall be tax paid according to the proof gallons or fractional parts of gallons in tenths actually left in the original package after said transfer into bottles.

SEC. 3. That all the provisions contained in the said Act heretofore referred to are hereby reenacted as part hereof in so far as there is no conflict with the provisions herein set out.

SEC. 4. That there shall be no allowance to the distiller for loss under section thirty-two hundred and ninety-four, internal-revenue laws, nineteen hundred.

SATURDAY, *March 14, 1908.*

**STATEMENT OF HON. BEN. JOHNSON, A MEMBER OF CONGRESS
FROM THE STATE OF KENTUCKY.**

[Mr. Johnson, having addressed the committee on the subject of salaries of customs and internal revenue officers (see Hearings, pp. 108-110), proceeded as follows:]

Mr. JOHNSON. The other bill, H. R. 17310, makes a provision that whisky may be bottled in bond as low down as 90 proof for home consumption. Under the law whisky for home consumption can be bottled only at 100 proof, 100 proof being 50 per cent water and 50 per cent alcohol, but under the export law in the same bill whisky may be bottled in bond for export at 80 proof.

Mr. SHERLEY. Do you know what the Canadian law requires as to the proof of Canadian whisky?

Mr. JOHNSON. I think they require no proof.

Mr. SHERLEY. And that whisky comes in competition with the bottled whisky made in the United States?

Mr. JOHNSON. Yes, sir. The law requires that whisky for home consumption bottled in bond shall be, as I stated, of 100 proof. That is most too strong and fiery to be drunk straight and water must be added to it. The branding and marking on the case and the Government stamp on the bottle show at what proof it is bottled, whether at 80 or 100. Therefore, if this bill becomes law no fraud can be practiced on anybody. If it is bottled at 90 proof the stamp will show that. If it is bottled at 95 proof the stamp will show that, just as it now shows that it is bottled at 100 proof.

Mr. HILL. Would that reduce the tax?

Mr. JOHNSON. No, sir; not at all. If it is tax paid at \$1.10 a gallon if it is 100 proof, then it is tax paid by the proof gallon, and it is also taxed \$1.10 wine gallon if it is less than 100 proof. So it makes no difference to the Government and is only for the convenience of the taxpayer, and it makes a softer and milder drink for the man who wants it.

Now, we come to the bill H. R. 17308. The object of the bill is to allow whisky to be transferred from the original package in barrel while in bond to bottles and cases.

Mr. GRIGGS. Can not that be done now?

Mr. JOHNSON. No, sir.

Mr. COCKRAN. You can not bottle whisky in bond?

Mr. JOHNSON. I did not say that. I will make myself clearly understood. The law provides that when the distiller desires to change his whisky from the barrel into bottles he must first pay the tax and then he must immediately remove it from the distillery premises. That is the part that I wish to obviate, that I wish to annul. It says that "it shall be immediately removed from the distillery premises." Those are the words in the act.

Mr. GRIGGS. Does the whisky age any more after being bottled?

Mr. JOHNSON. No, sir. The law provides that no whisky shall be bottled in bond until it is four years old. My bill does not change that. It is an accepted theory in recent years that whisky has undergone all of the chemical changes in four years which it ever under-

goes. Those chemical changes take place rapidly and vary during the first three years, but at some period between the end of the third year and the beginning of the fourth year the chemical changes all stop.

Mr. DALZELL. Is 4-year-old whisky as good as 7, 8, or 9 year old whisky?

Mr. JOHNSON. Yes, sir; I say so. Some people object to the bottling in bond at 4 years because they think the fusel oil and the acids and those kinds of things have not had time to evaporate. I make this assertion, that a man who takes a drink of whisky from a barrel that has been in bond for eight years, to which nothing has been added and from which nothing has been subtracted, gets just double the quantity of fusel oil with every drink that he gets in new whisky.

Mr. BONYNGE. Double the amount?

Mr. JOHNSON. Not quite double the amount, although frequently more. The quantity of fusel oil in a barrel of whisky will increase up to four years in 40 per cent of the number of barrels.

Mr. LONGWORTH. What is your definition of whisky?

Mr. JOHNSON. My definition of whisky is distilled alcohol which has the secondary products of distillation in it, that is, fusel oil, the acids and the ethers.

Mr. GRIGGS. Does all whisky contain fusel oil?

Mr. JOHNSON. It is not whisky unless it has fusel oil in it. In every glass of 8-year-old whisky taken from a barrel, to which nothing has been added or nothing subtracted artificially, you get double the quantity of fusel oil that you get in a glass of 3 or 4 year old whisky.

Mr. DALZELL. I think Doctor Wiley testified that fusel oil was wholesome?

Mr. JOHNSON. Yes, sir; it is. Doctor Wiley said that if you brought him a brimming glass of fusel oil he would drink it in your presence. Without the fusel oil, without the acids, and without the ethers, there is no taste and no aroma.

Mr. COCKRAN. Tell us about the bottling.

Mr. JOHNSON. As I said, the distiller now bottles in bond, but he does not bottle the whisky until he has paid the tax on it, and as soon as he pays the tax and it is bottled it must be removed from the distillery premises. I say if my bill is passed that it will make for the United States Government many, many thousands of dollars every year and at the same time it will benefit the taxpayer. It will benefit the taxpayer in two ways. In the first place, it will benefit the taxpayer in this way: If he undertakes to carry on hand a stock of bottled-in-bond goods he carries in that \$1.10 a gallon tax which he has paid on the goods. In order to carry a large stock of whisky bottled in bond ready to fill immediate orders he has to pay the United States \$1.10 tax on every gallon of it. In addition to that, the law, under section 3294 of the statutes, allows a distiller, upon which he does not pay tax, an outage at the end of four years, when he may under the present law bottle in bond, the Government allows him an outage for leakage and evaporation of 9 gallons to every 40-gallon barrel on which he pays no tax.

Mr. COCKRAN. About 20 per cent?

Mr. JOHNSON. Yes, sir; the outage period extends to the end of seven years. At the end of the seven years the Government allows him

an outage of $13\frac{1}{2}$ gallons to every 40-gallon barrel on which he pays no tax. Therefore, if the whisky is bottled in bond at the expiration of four years, or, in other words, changed from the barrel into bottles at the end of four years, the outage ceases and there can be no more. Therefore the Government is then enabled to collect a tax of \$1.10 a gallon on the difference of $4\frac{1}{2}$ gallons in those new periods, amounting to \$4.40 a barrel, about 60 per cent of the original cost of the whisky.

The CHAIRMAN. Is the object of the bill to compel them to pay that tax at the end of four years?

Mr. JOHNSON. My bill compels them to pay the tax and transfer the whisky from the barrel into the bottles, and then whenever they take the bottled goods out to pay the tax the outage stops.

Mr. DALZELL. They pay the tax at the time the whisky goes into the bottles?

Mr. JOHNSON. They pay the tax on the original amount that goes into the bottles.

Mr. GAINES. Is the outage a matter of regulation or law?

Mr. JOHNSON. It is by statute.

Mr. GAINES. Then, would you not have to change the statute to stop the outage?

Mr. JOHNSON. No, sir.

The CHAIRMAN. We have not increased the outage every time we increased the bottling period?

Mr. JOHNSON. The last time the bottling period was extended it was from seven years to eight years, and no additional outage was allowed.

The CHAIRMAN. I think after we got to $13\frac{1}{2}$ gallons they urged that we stop on that.

Mr. JOHNSON. Yes, sir; at the end of seven years. I want to say that $13\frac{1}{2}$ gallons is not sufficient to cover the loss. It will not cover the actual loss. There is not a day in the internal revenue offices that they do not collect tax upon hundreds of barrels for more outage than the $13\frac{1}{2}$ gallons at the end of the time.

Mr. RANDELL. What would be the difference in proof?

Mr. JOHNSON. That is entirely speculative. It is put in bond at about 100 proof. If the storage is high and dry that whisky in eight years may go to 110 to 112 proof. If it is stored low and damp instead of going above 100 it will go down into the nineties. In other words, it absorbs the atmosphere to that extent.

Mr. GRIGGS. Do they put water into that whisky after it gets to 110 proofs?

Mr. JOHNSON. When they come to bottle it they must add sufficient water to reduce it to 100 proof.

Mr. RANDELL. Do they pay any tax on the additional whisky?

Mr. JOHNSON. Yes, sir; either proof or wine gallon. I wish to make myself plain upon three points; that this bill will be beneficial to the distiller, because he can carry his bottled goods in bond and pay the tax when he needs them. For instance, take a distiller in my county—

Mr. GAINES. Would it not cost the Government something to prepare the warehouses for the housing of the bottled goods?

Mr. JOHNSON. The distiller pays that; it does not cost the Government anything.

The CHAIRMAN. Has prohibition increased the sale of whisky in bottles rather than in barrels?

Mr. JOHNSON. Yes, sir. A man can take several bottles, put them into his valise, and carry them into a local option country, but he can not carry a barrel of whisky or a keg of beer into that same locality. I might say that during the first five years of the bottled period there were but little goods bottled. During the last ten years it has increased about ten times over.

As I was saying, if a distiller lives 10 or 12 miles from the deputy collector who handles the stamps and he wants to bottle in bond he sends a messenger, say 10 or 12 miles, to the deputy collector and advises him that he wishes to withdraw so many barrels of whisky from bond. Then the messenger takes back a blank permit which the distiller fills up. That is then sent back to the stamp deputy, who approves it, and the gauger is ordered to go and make a gauge of the barrels which are sought to be withdrawn. Then after the gauger has gauged and ascertained the amount of tax to be paid, the messenger goes back over the 10 or 12 miles again with the money with which to purchase the stamps. He takes the stamps back and the gauger or the storekeeper-gauger, whichever it may be, attaches them to the barrel. During all this time, which occupies about three days, the distiller has had an order for the bottled in bond goods and he has not the goods with which to fill the order. Then it takes about two more days to bottle the whisky. It takes one day to get it and it must go into the settling cistern where all the charcoal particles will settle at the bottom, so that the whisky can be drawn off and put into the bottle clear. He has lost about four days.

I have a number of distillers in my county who have to undergo that process every time they want to withdraw whisky for bottling purposes. If the distiller had the whisky in the warehouse already bottled then he could fill the order by the next train. That is one advantage to him. The next advantage is, as I stated a moment ago, that the outage allowed by law is not sufficient to cover the actual loss. Therefore, while the Government is saving outage it is losing the revenue, and the distiller is being saved the outage upon which he must pay tax notwithstanding the fact that the whisky is not in the barrel.

Mr. SHERLEY. And is also being saved the cost of the whisky that would be lost by evaporation?

Mr. JOHNSON. Yes, sir. The particular point which I desire to again call to your attention is this, that whenever whisky is bottled in bond at the expiration of four years, which whisky would otherwise have remained in the barrel, that the Government saves \$1.10 a gallon on every gallon that is saved from this evaporation or this loss.

I hope I have made myself clear, gentlemen. If I have not, I am willing to answer any questions.

Whereupon the hearing was closed.

FRUIT BRANDY.

BILL UNDER CONSIDERATION.

[H. R. 13456, Sixtieth Congress, first session.]

A BILL To amend section thirty-two hundred and fifty-five of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section thirty-two hundred and fifty-five of the Revised Statutes of the United States be, and the same is hereby, amended so as to read as follows:

"SEC. 3255. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, prunes, figs, cherries, plums, bananas, persimmons, or pawpaws from any provision of this title relating to the manufacture of spirits, except as to the tax thereon, when in his judgment it may seem expedient to do so."

THE COMMITTEE ON WAYS AND MEANS,

Tuesday, March 17, 1908.

The committee this day met at 10.30 a. m., Hon. Sereno E. Payne in the chair.

Present: The Chairman, and Messrs. Dalzell, McCall, Boutell, Needham, Fordney, Gaines, Bonyng, Longworth, Clark, Granger, and Randell.

The CHAIRMAN. You may proceed, Mr. Hayes.

STATEMENT OF HON. E. A. HAYES, A MEMBER OF CONGRESS FROM THE STATE OF CALIFORNIA.

Mr. HAYES. Mr. Chairman and gentlemen of the committee, I only desire to call your attention to the bill H. R. 13456, introduced by me, the purpose of which is simply to put four fruits that are not now named in the law on the same basis as the other fruits. The law provides that as to the fruits named in it the Commissioner of Internal Revenue may exempt distillers of brandies, or spirits, as he calls them, produced from these fruits from the operation of any section of the law, except the payment of taxes, and I only desire to put these other fruits on the same footing.

Mr. CLARK. What fruits are they?

Mr. HAYES. Plums, bananas, persimmons, and pawpaws. The fruits that our people are interested in are the plums. We have in certain portions of the State very large plum orchards, and they are very uncertain in price; sometimes they get a good price and it is very profitable, and sometimes the price goes all to pieces, which would not occur if the people could take the plums to the distilleries. That is all there is to the bill, and I shall be very glad if you can see your way clear to report it.

Whereupon the hearing closed.

TAX ON TOBACCO COUPONS

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

•

ON

H. R. 16085

APRIL 2 AND 3, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS.

HOUSE OF REPRESENTATIVES.

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WILLIAM K. PAYNE, *Clerk*.

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TAX ON TOBACCO COUPONS.

BILL UNDER CONSIDERATION.

H. R. 16085.

A BILL To levy a tax upon the issuance of coupons, prize tickets, and other devices, and on the redemption, payment, purchase, or exchange of coupons, prize tickets, tags, bands, or other articles, things, or parts of articles or things, that shall have been attached to, packed in or with, or formed a part of, or encircling, or given with any manufactured tobacco, cigar or cigars, cigarette or cigarettes, or snuff, or any stamped package or receptacle thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid by adhesive stamps, a tax of two cents for and upon every coupon, prize ticket, or other device, attached to, packed in or with, or forming a part of, or encircling, or given with any manufactured tobacco, cigar or cigars, little cigar or little cigars, cigarette or cigarettes, or snuff, or any stamped package or receptacle thereof, if any such coupon, prize ticket, or other device, contains any direct or indirect promise, or proposition, or offer, to make redemption or payment in cash therefor, or for any number of same, or to exchange property therefor, or for any number of same, whether such redemption, payment, or exchange, is made or is to be made by a manufacturer of such tobacco, cigars, cigarettes, or snuff, or any other person, firm, or corporation.

SEC. 2. That on and after the first day of July, nineteen hundred and eight, there shall be levied, collected, and paid, by adhesive stamps, a tax of two cents for and upon redemption, payment, purchase, or exchange of any coupon, prize ticket, tag, band, or any other article, thing, or part of an article or thing, which before being offered for such redemption or purchase shall have been attached to, packed in or with, or formed a part of, or encircled, or given with any manufactured tobacco, cigar or cigars, little cigar or little cigars, cigarette or cigarettes, or snuff, or stamped package or receptacle thereof.

SEC. 3. That coupons, prize tickets, and other things mentioned in the first section of this Act, stamped in accordance with the provisions thereof, notwithstanding anything contained in the section hereof, upon being offered for redemption, or sale, shall not be required to pay said tax, but all coupons, prize tickets, and other things mentioned in said first and second sections hereof, not stamped when issued by the manufacturer, or other person, firm, or corporation issuing same, shall, if presented for redemption on and after the said first day of July, nineteen hundred and eight, be stamped as provided in said section second hereof by the person, firm, or corporation presenting the same for redemption, purchase, or exchange.

SEC. 4. That the Commissioner of Internal Revenue shall cause to be prepared for the payment of the taxes provided by this Act suitable stamps denoting the said tax. Such stamps shall be furnished collectors desiring them.

SEC. 5. That in all cases where an adhesive stamp is used for denoting the tax imposed by this Act, the person, firm, or corporation using or affixing same shall write or print thereon the initials of his or its name, and the date on which said stamp is attached or used, so that it may not again be used. Any person, firm, or corporation who fraudulently makes use of an adhesive stamp to denote any tax imposed by this Act without so effectually cancelling and obliterating such stamp, shall forfeit the sum of fifty dollars. The Commissioner of Internal Revenue is authorized to prescribe such method further for the cancellation of stamps as substitute for, or in addition to, the method prescribed in this section, as he may deem expedient and effectual. And he is directed to make the application of such method imperative.

SEC. 6. That if any person shall forge or counterfeit, or cause or procure, to be forged or counterfeited, any stamp, die, or other instrument, or any part of any stamp, die, plate, or other instrument, which shall have been provided, or may hereafter be provided, made, or used in pursuance of the provisions of this Act or any previous provisions of law on the same subject, or shall forge, counterfeit, or resemble, or cause or procure to be forged, counterfeited, or resemble, the impression, or any part of the impression, of any such stamp, die,

plate, or other instrument, as aforesaid, upon any paper, or shall stamp or mark, or cause or procure to be stamped or marked, any paper with such forged or counterfeit stamp, die, plate, or other instrument, or part of any stamp, die, plate, or other instrument, as aforesaid, with intent to defraud the United States of any of the taxes hereby imposed, or any part thereof, or if any person shall offer, or sell, or expose to sale, any paper, article, or thing, having thereon the impression of any such counterfeited stamp, die, plate, or other instrument, or any part of any stamp, die, plate, or other instrument, or any such forged, counterfeited, or resembled impression, or any part of any impression, as aforesaid, knowing the same to be forged, counterfeited, or resembled; or if any person shall knowingly use, or permit the use of, any stamp, die, plate, or other instrument, which shall have been so provided, made, or used, as aforesaid, with intent to defraud the United States; or if any person shall fraudulently cut, tear, or remove, or cause or procure to be cut, torn, or removed, the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of this act or of any previous provisions of law on the same subject from any paper, or any instrument, or writing charged or chargeable with any of the taxes imposed by law; or if any person shall fraudulently use, join, fix, or place, or cause to be used, joined, fixed, or placed to, with, or upon any paper or any instrument or writing charged or chargeable with any of the taxes hereby imposed any adhesive stamp, or the impression of any stamp, die, plate, or other instrument which shall have been provided, made, or used in pursuance of law, and which shall have been cut, torn, or removed from any other paper, or any instrument or writing charged or chargeable with any of the taxes imposed by law; or if any person shall wilfully remove, or cause to be removed, alter, or cause to be altered, the cancelling or defacing marks on any adhesive stamp, with the intent to use the stamp, or to cause the use of the same after it shall have been once used, or shall knowingly or wilfully sell or buy such washed or restored stamps, or offer the same for sale, or to give or expose the same to any person for use, or knowingly use the same, or prepare the same with intent for the further use thereof; or if any person shall knowingly and without lawful excuse, the proof whereof shall lie on the person accused, have in his possession any washed, restored, or altered stamps which have been removed from any article, paper, instrument, or writing, then, and in every case, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting in committing any such offense, as aforesaid, shall, on conviction thereof, forfeit the said counterfeit, washed, restored, or altered stamps and the articles upon which they are placed and be punished by a fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor not exceeding five years, or both, at the discretion of the court. And the fact that any adhesive stamp he bought, sold, offered for sale, used, or had in possession, as aforesaid, has been washed or restored, by removing or altering the cancelling or defacing mark thereon, shall be prima facie evidence that the stamp has been once used and removed by the possessor thereof from some paper, instrument or writing charged or chargeable with taxes imposed by law in violation of the provisions of this section.

SEC. 7. That whenever any person, firm, or corporation violates any of the provisions of section one, section two, section three hereof by the issuance of any coupon, prize ticket, or other device, as provided for in section one, without attaching thereto any adhesive stamp denoting the tax before mentioned, or after the first day of July, nineteen hundred and eight, presents for redemption, sale or exchange, or redeems, purchases, or gives property in exchange for any coupon, prize ticket, tag, band, or any other article or thing, as provided in section two hereof, without affixing thereto an adhesive stamp denoting the tax herein provided for, such person, firm, or corporation shall, upon conviction thereof, be punished by a fine of fifty dollars for every failure to affix such stamp or stamps.

COMMITTEE ON WAYS AND MEANS,

Thursday, April 2, 1908.

The committee met at 10.30 o'clock a. m., with Hon. Sereno E. Payne in the chair.

Present: The chairman and Messrs. Dalzell, McCall, Hill, Needham, Calderhead, Fordney, Bonynge, Longworth, Clark, Cockran, Granger, Griggs, Pou, and Randell.

The CHAIRMAN. We will proceed to a hearing on the anticoupon tobacco bill (H. R. 16085). I understand the parties in favor of the bill will be content with an hour. Is that so, Mr. Yerkes?

Mr. YERKES. We think, Mr. Chairman, that an hour, or an hour and a quarter at the utmost, will be sufficient.

The CHAIRMAN. You may proceed.

**STATEMENT OF HON. JOHN W. YERKES, ATTORNEY, OF
WASHINGTON, D. C.**

Mr. YERKES. Mr. Chairman, some weeks ago I was asked by a number of independent tobacco manufacturers—that is, manufacturers of tobacco and producers of cigarettes and snuff—to examine this bill that is before you for consideration this morning (House bill 16085, introduced by Mr. Tawney), and to look at it for two purposes: First as to its constitutionality, and secondly as to the propriety of such legislation by the Congress—that is, the propriety in their asking this Congress to consider and report favorably such a bill; and to appear before the committee and make such a statement regarding it as seemed proper.

I think it germane, and perhaps absolutely and abundantly proper, at the opening, very briefly to give the history of Congressional legislation with regard to these packages of manufactured tobacco. Of course many of you gentlemen have been a part of that legislation. There are, however, some members of the committee who have not participated in the previous enactments by Congress on this subject.

Prior to the passage of the Dingley bill of 1897 there was virtually no legislative and no departmental restriction upon what was placed or could be placed by manufacturers in these packages. As a result, you found, especially in cigarette packages, pictures of scantily clothed dancing girls, and others, that were believed to be immoral and improper. You found in many of these tobacco pouches what were really lottery tickets—coupons which gave you a chance, by number or in some other way, to become the owner of property that was disposed of through lottery methods. You found even articles of weight in them, like knives. The result was that the condition had reached such a point that in 1897 the Congress absolutely prohibited the placing within these packages of anything except the tax-paid tobacco itself—that is, the article that was to be tax paid. So that under that act of 1897 you could place within these packages, whether large or small (these are quite small), nothing except the tobacco itself, which was represented by the Government stamp passing over the package in such a way as to prevent it from being opened without the destruction of the stamp. Then, on the wrapper, the receptacle, was the name, of course, of the manufacturer, and such labels, etc., as he chose to put upon it.

A question was raised as to the constitutionality of that act of Congress; and it was decided by the Supreme Court that Congress had the right to declare what should be placed inside of one of these packages, or, at any rate, had certainly the right to declare that nothing should be placed inside except the tax-paid article itself upon which the stamp was affixed.

That was the law from 1897 until the act of July 1, 1902, which provides, as a revision or amendment of the Dingley section:

No packages of manufactured tobacco, snuff, cigars, or cigarettes prescribed by law shall be permitted to have packed in or attached to or connected with them, nor affixed to, branded, stamped, marked, written, or printed upon them, any paper, certificate, or instrument purporting to be or representing a ticket, chance, share, or interest in or dependent upon the event of a lottery, nor any indecent or immoral picture, representation, print, or words; and any violation of the provisions of this paragraph shall subject the offender to the penalties and punishments provided by section three thousand four hundred and fifty-six of the Revised Statutes.

Under that act, and under the report made by the Ways and Means Committee to the Congress in reporting this amendment, the internal-revenue bureau provided (and I read from the regulations concerning the tax on tobacco, snuff, cigars, and cigarettes of August 1, 1907):

That a manufacturer may place within his statutory package containing tobacco, snuff, cigarettes, or cigars, small advertising cards, coupons, certificates, paper bands, circulars, trade-mark tin tags, and trade-mark strips which do not materially increase the size of the package, and which are intended as an advertisement of his business, and concern the manufacture and sale of his products, and no other business; and such advertising matter will not be prohibited, although intended to be returned to the manufacturer or to some person designated by him on the coupon and exchanged for other articles, provided the distribution of the prize articles does not depend upon the event of a lottery.

That is the existing law. The bill under consideration at present does not deprive the manufacturer of the right to place within the package every article named in the act of 1902, but it simply provides:

That if any coupon, prize ticket, or other device attached to or packed in with or forming a part of or encircling or given with any manufactured tobacco, cigars, cigarettes, etc., if such coupon, prize ticket, or other device contains any direct or indirect promise or proposition or offer to make redemption or payment in cash therefor, or for any number of same, or to exchange property therefor, or for any number of same, whether such redemption, payment, or exchange is made or is to be made by a manufacturer of such tobacco, cigars, cigarettes, or snuff, or any other person, firm, or corporation, then such a coupon that has attached to it this prize feature shall, by an adhesive stamp, pay a tax of two cents.

So, therefore, the manufacturer will still have the right to use this prize system if he sees fit to do so; but if he does, he pays this tax upon it. If he does not use it, of course he does not pay the tax.

Now, the question comes as to the propriety (I will not say the legality) of the use of these coupons. After the passage of the Dingley Act, when it was no longer legal to place within the package bearing the tax-paid stamp coupons, prize tickets, lottery tickets, or anything of that kind, one tobacco manufacturing establishment (and I refer to the American Tobacco Company, commonly called "the Trust;" and I suppose it is not in any way offensive to use that word "trust," because I believe now we all agree that there are both good and bad trusts) and perhaps others adopted the plan of, not in or on the package notifying the public of what could be and would be redeemed and how they could be redeemed, but by extraneous, outside advertising matter saying that "If you will return," for instance, "a certain portion of this package, of the container or wrapper, of the lid of the box," or what not, "then, in that case, we will hold

that that has a specified interest in certain named articles; and if you send enough of them," 30 or 40 or 100, or whatever the number may have been, "you get the article."

Bills were introduced in 1903, and I believe one of them was favorably considered by the Ways and Means Committee and reported to the House (I have them here before me; one was the Tawney bill of 1903), that denied the right to place within these packages prize coupons, and went one step further and provided that it should be unlawful for any manufacturer of tobacco, snuff, cigars, or cigarettes, or retail dealer, to give or offer to give, directly or indirectly, any gift or premium for the return of any tag, label, or coupon. The question was immediately raised as to whether that section of the proposed law was constitutional. In other words, while admitting that under the decision of the Supreme Court following the Dingley Act the Congress had the power to say, "You shall place nothing except the tax-paid article, viz, the tobacco, snuff, or cigarettes, within the package bearing the Government stamp," it was contended that the Congress could not say to the manufacturer, "You can not offer and give to the purchaser of your goods an opportunity to participate in these gift prizes;" that, in other words, the retail dealer could not hand to the purchaser of the package, and with the package, a coupon, memorandum, or paper indicating that this purchaser had this interest in these articles.

I am inclined to think, especially under some State decisions that seem to be thoroughly well reasoned, while there is no United States Supreme Court decision that I think covers the case absolutely, still, for the sake of argument, I am willing to admit that that feature of that act may perhaps have been unconstitutional. But that question does not arise under this proposed bill at all. There is no reference to any such question.

Of course, the power of Congress to levy taxes is exceedingly broad and extensive. As I recall the provisions of the Federal Constitution, there is only one absolute denial to the Congress in levying taxes. You can not levy a tax upon any articles exported from a State. I think there are only two other qualifications or restrictions upon your power: First, if a capitation or direct tax, it must be levied according to the prior census enumeration; and all levies, imposts, duties, or taxes must be uniform throughout the United States.

I presume that no lawyer would for a moment claim that this proposed tax upon this method of doing business is a direct tax. The decisions of the Supreme Court are clear as to what constitutes a direct tax—a capitation tax, a tax on real estate and (under the decision of 1895) a tax upon personal property. This is a tax levied upon a mode of doing business, just exactly as you levy a tax, not upon the property transmitted by means of the succession or inheritance tax, but (under *Knowlton v. Moore* case) upon the act of passing.

The next question is, perhaps, "Is this tax unconstitutional because it does not embrace every article upon which an internal-revenue tax is levied?" In other words, it may be said that you have distilled spirits upon which a Government tax is levied; that you have oleomargarine; that you have fermented liquors; and yet that the Congress, under this act, segregates and selects certain manufactured

tobacco products alone and makes this act applicable to the manufacturer dealing with them in this named way.

Gentlemen, according to my judgment, the law is absolutely constitutional. It is a uniform law with regard to tobacco. Some one might raise the question under the section of the Federal Constitution as to uniformity in taxation, that it is not uniform because it does not cover every article that is subject to an internal-revenue tax, but selects tobacco. It seems to me that under the decisions of the Supreme Court this claim can not be made good. If so, it is perfectly easy to amend the bill, if anyone should take that view of it and otherwise favor it.

In the case of *Knowlton v. Moore*, which you gentlemen all remember, 178 U. S., the Supreme Court held that the expression "uniformity" was synonymous with the expression "to operate uniformly throughout the United States." Under that decision certainly this act is constitutional, because it operates uniformly throughout the United States upon these tobacco products, and upon every manufacturer engaged in producing them.

In the case of *Edye v. Robinson*, and in the case of the *Cunard Steamship Company* against the same defendant, reported in 112 U. S. (generally called the "head-money cases," because this decision was a construction of the first legislative enactment levying a head tax upon foreigners imported, and requiring steamships or sailing vessels that brought them into ports to pay this tax) the point was made that the tax was not uniform because it was levied only upon the heads of those foreigners who were imported to the United States by vessels, and was not levied upon foreigners who were brought in by means of railroads from Mexico, Canada, or elsewhere, or who came in in other conveyances or in other methods. The court said:

The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this country by ocean navigation, is uniform and operates precisely alike in every port of the United States where such passengers can be landed. It is said that the statute violates the rule of uniformity and the provision of the Constitution that no preference shall be given to any regulation of commerce or revenue to the ports of one State over those of another, because it does not apply to passengers arriving in this country by railroad or other inland mode of conveyance; but the law applies to all *ports* alike, and evidently gives no preference to one over another, but is uniform in its operation in all ports of the United States.

In the case of the *United States v. Singer* (15 Wall., 111) the Supreme Court, speaking through Mr. Justice Field, said, where a law levying certain taxes upon distilled spirits (the law of 1868) provided that the distiller himself should compensate the gauger and storekeeper-gaugers who might be placed at his plant (they are now paid by the Government):

The law is not, in our judgment, subject to any constitutional objection. The tax imposed upon the distiller is in the nature of an excise.

There was a tax imposed upon him and not imposed upon the brewers of fermented liquors or manufacturers of tobacco, although they bore a revenue tax at the same time.

The tax imposed upon the distiller is in the nature of an excise, and the only limitation upon the power of Congress in the imposition of taxes of this character is that they shall be uniform throughout the United States. The tax here

is uniform in its operation; that is, it is assessed equally upon all manufacturers of spirits, wherever they are. The law does not establish one rule for one distiller and a different rule for another, but the same rule for all alike.

It seems to me that that is exactly the point in this case—that this law establishes one rule for every tobacco manufacturer, for all alike; not one rule for one and a different rule for another.

As to the propriety and also the legality of a tax of this kind, which is a tax upon a method of doing business, I wish to call the attention of the committee especially to the comparatively recent case of *Nicol v Ames* (173 U. S., 509). You gentlemen will recall that in your act of June 13, 1898 (the Spanish war revenue act), you provided that in case of sales made at any exchange or board of trade of products or merchandise the seller was compelled to give to the purchaser a certain written or printed memorandum showing the nature of the agreement, etc., and then you provided for a tax upon that memorandum. Here was a specific, definite, and fixed mode under which this particular type and class of business was to be conducted; and upon the memorandum of sale you provided that this tax should be affixed by an adhesive stamp.

In this case the claim was made and urged with power and force by distinguished counsel (Mr. Carlisle being one of them) that the law was unconstitutional. The Supreme Court, in considering that, discusses fully the power of the Congress to impress a tax upon this mode of business. The tax was not impressed upon the merchandise sold. The tax was not impressed upon the business or vocation of the broker, but it was impressed upon the mode. It was said that you must do it in a certain way, and upon that Congress placed this tax. The same thing was done all through that act, as you gentlemen recall. There were a number of instances in which the taxes were imposed.

The Supreme Court says:

In searching for proper subjects of taxation to raise moneys for the support of the Government Congress must have the right to recognize the manner in which the business of the country is transacted; how, among other things, the exchange of commodities is effected; what facilities for the conduct of business exist; what is their nature and how they operate; and what, if any, practical and recognizable distinction there may be between a transaction which is effected by means of the use of certain facilities and one where such facilities are not availed of by the parties to the same kind of transaction.

That is going to this proposition: This tax was levied upon the sales that occurred on the board of trade. Two gentlemen in their office could meet and make a sale; farmers could meet and make their sales. It was when the sale was made on the board of trade that the tax was affixed. And the court says that there may be a difference between a transaction which is effected by means of using certain facilities and one where such facilities are not availed of by the parties to the same kind of transaction. In one case the tax is affixed and in the other not.

That is this act. Those manufacturers who desire to take advantage of these prize coupons can do so by paying the tax, just as the man who sold on the board of trade had to pay the tax. The man who does not desire to use the coupon can put his tobacco upon the market without the coupon and is not compelled to pay the tax.

The court proceeds:

This tax is asserted to be a direct tax because it is a tax upon the sale of property measured by the value of the thing sold, and such a tax is a direct tax upon the property itself, and therefore subject to the rule of apportionment. All the cases involving this question whether the tax to which objection was taken amounted practically to a tax on the property are cited. If this tax is not on the property or on the sale thereof, then these cases certainly do not apply. We think the tax is, in effect, a duty laid upon the privilege, opportunity, or facility offered at boards of trade or exchanges for the transaction of the business mentioned in the act. It is not a tax upon the business itself which is so transacted, but is a duty upon the facilities made use of and actually employed in the transaction of the business and separate and apart from the business itself.

The court continues and takes up the question of uniformity, and says there is nothing in that.

The CHAIRMAN. Mr. Yerkes, if it will not interrupt you there, I would like to ask you a question.

Mr. YERKES. It will not.

The CHAIRMAN. As I recollect it, the oleomargarine act was held by the Supreme Court to be constitutional because the court could not say on the face of the act that Congress imposed that tax for the purpose of suppressing the sale of oleomargarine.

Mr. YERKES. Yes, sir.

The CHAIRMAN. But that it was within the taxing power of Congress.

Mr. YERKES. Yes, sir; that is true.

The CHAIRMAN. If we should pass this bill, what do you say as to whether the bill would show on the face of it that the only object of Congress was to suppress the issuing of these coupons and other articles in the package?

Mr. YERKES. On that proposition, Mr. Chairman, I would have this to say: On the face of it, it is a revenue-producing law. There is a tax provided upon a business system now existing, and existing in the United States. You provide the same tax upon each one of these coupons that was provided in the oleomargarine law upon the pound of oleomargarine, the original act, 2 cents a pound, if I remember. The Supreme Court said that on the face of it, it was a taxing law; that they could not look behind the veil; that behind it there might be the distinct and absolute purpose on the part of Congress to destroy the oleomargarine business, and incidentally to protect, of course, the cow; but that it is not the province of the court to look behind an act which, upon its face, is a revenue-producing law.

Mr. Chairman, I think that question could be again answered in this way: Under the decision of the Supreme Court in a case decided in 1902 (the Felsenheld case—it was decided after the passage of the Dingley act), when the question was raised, the court decided that you have the power to exclude these coupons from these packages; and you did it. Therefore, if you wanted simply to prevent the use of these coupons, you could do so in a moment by reenacting the Dingley bill. Therefore this act will not show the purpose of destroying the use of these coupons and preventing it, because you could do that by a few words; but it shows the privilege of allowing their use to the manufacturer, attaching to it a return to the Government for the privilege of transacting business in that way.

Mr. McCALL. Mr. Yerkes, if it will not interrupt you, I should like to ask this question: It seems to me that that brings up the vital point in the whole matter. Instead of taxing the business of selling coupons or selling prizes, why would it not be better to frame the statute upon that decision of the Supreme Court, which you first referred to, and provide that the package shall contain nothing but the tax-paid article, and let it simply stand at that?

Mr. YERKES. I am frank to say that simply as an individual (and I know I am not voicing the sentiments of some of the gentlemen whom I am representing here) I have always had the idea in my own mind that in the case of any article upon which the law requires a Government stamp to be affixed the package should contain the tax-paid article and nothing else. But the manufacturers say:

We want to advertise our business by placing within these packages certain labels and certain tags; we have been doing it, and it would interfere with and seriously incommode if not destroy our business if you stopped it altogether.

So, therefore, to try to meet all sides of the case this bill was drawn, which allows the continuance of these former business methods, but provides that if there accompanies these tax-paid packages the hope of further reward and the securing of other property than that covered by the tax-paid stamp, then that mode and character of doing business shall pay a revenue to the Government.

Mr. DALZELL. Mr. Yerkes, let me ask you this question: Is not the amount of the tax named in this bill influenced by the result to be attained? In other words, is it not prohibitive?

Mr. YERKES. Upon that question I can not answer, Mr. Dalzell.

Mr. COCKRAN. That is the intention, is it not?

Mr. YERKES. No, sir; I do not understand that to be the intention. My understanding of the intention is this—and I have nothing at all to conceal. I will state frankly what I understand to be the objects of this bill and the reason for its introduction so far as I get it from the gentlemen for whom I am speaking—some independent tobacco manufacturers: If the manufacturer believes that this mode of doing business is worth that much to him, of course he pays the tax, whether it is worth that much to him in actual money return or in the power to destroy the competitor, because the present system has a two-fold value and is used for a two-fold purpose by the American Tobacco Company—both to increase its sales and to absolutely destroy competition. Those facts can be made as clear as crystal by proof that can not be gainsaid; and they have been made plain by the testimony taken by the Government in the case now pending against the American Tobacco Company.

Mr. COCKRAN. Mr. Yerkes, that is just the point upon which I should like some enlightenment. That touches the policy of this measure.

Mr. YERKES. The propriety.

Mr. COCKRAN. As distinguished from its constitutionality?

Mr. YERKES. Yes, sir; the propriety or the policy. I said I was to argue both questions.

Mr. COCKRAN. You have not discussed that? I was a little late in coming in.

Mr. YERKES. No, sir. I stated at the beginning that I was asked to talk upon the two questions—the constitutionality and the propriety of this bill under existing circumstances.

Mr. CLARK. If that last statement of yours is true (and I take it that it is) about the American Tobacco Trust, why does not that strengthen Mr. McCall's suggestion that we pass a law prohibiting the thing? Some of the others are in it.

Mr. YERKES. Oh, yes; some of the independents are in it. Of course, they will oppose this bill; there is no question about that. All of the independents are not for it. But it will have this effect: That if the man gets this special privilege that Congress is giving him under this legislation, viz, of putting these prize coupons in a package bearing the stamp that is supposed to evidence simply the payment of the tax (on what? not upon a special mode of doing business, but upon an ounce or 3 ounces of tobacco)—if he is going to take advantage of that privilege that the Congress gives him, let him pay the tax for that business privilege.

Mr. CLARK. But if it is a bad business method, and used for bad ends, it ought to be stopped absolutely.

Mr. YERKES. That is a matter that you gentlemen have to consider. You have it in your power to stop it absolutely.

Mr. BONYNGE. The avowed object of the bill is to use the taxing power for the accomplishment of another purpose than the raising of revenue, is it not?

Mr. YERKES. Both purposes, sir; just as the oleomargarine law was for both purposes.

Mr. COCKRAN. It is like the oleomargarine law?

Mr. YERKES. It is exactly like the oleomargarine law. It is a taxing bill; and the courts can not go behind it on that account.

Mr. COCKRAN. Will you tell us how it is that the American Tobacco Company enjoys any particular advantage under this state of affairs that its competitor has not got? How does it operate to give it an advantage?

Mr. YERKES. It operates, as I understand it, in this way: That the small manufacturer, the individual of limited means and resources, can not engage in this prize-giving business; that he is absolutely estopped from competing with the American Tobacco Company in that field.

Mr. COCKRAN. Why is that? Why is that so?

Mr. YERKES. Because of a lack of resources, and the further fact that the American Tobacco Company produces almost every form of manufactured tobacco—the smoking, the chewing, the snuff, the cigars, and the cigarettes. Their coupons are interchangeable. By that I mean that if I buy cigars and get a coupon, and I buy manufactured smoking tobacco and get a coupon, and buy cigarettes and get a coupon, and buy chewing tobacco and get a coupon, I can put those together and make them a portion of my ability to take from the American Tobacco Company the prize offered.

The CHAIRMAN. I was about to say that if you would rather proceed until you get through, and answer questions afterwards, the committee will accommodate you in that way.

Mr. YERKES. I really have no fixed line of remarks. I made some references to these Supreme Court cases to save time; but there is just one other point before I come to that, Mr. Cockran, with your permission.

The competition between gentlemen who manufacture a product upon which the Government fixes a tax, it seems to me, should depend

primarily upon the actual merit of the article and should not rest upon some other article, an opportunity to secure which goes under the tax-paid stamp into the hands of the purchaser; or, if you give him that privilege, then that is a privilege that properly should bear a tax. As long as this coupon project is used your package of tobacco that bears this Government stamp is of value not only to the purchaser to the extent of the tobacco, but to the extent of the opportunity to become the owner of these various articles that are advertised by the American Tobacco Company or by the Bloch Company, as I have papers here showing that they give for so many coupons.

With regard to the question of the small individual manufacturer being able to compete, here is the catalogue of 1908-9 issued by the American Tobacco Company, in which appears almost everything that the human mind could desire, whether it be the mind of a child, a man, or a woman. Just go over this and see the list that they give—everything; pianos, rugs, sweaters, even golf sticks, I think.

Mr. HILL. Would that package which you just took up, which had a coupon attached to the outside of it, have been in violation of the law of 1897? I refer to your statement that nothing should be put in the package except the article taxed. Would that package, with the coupon attached to the outside and nothing inside but the tobacco, have been in violation of that law?

Mr. YERKES. It would have been in violation, because the act of 1897 provides that nothing shall go inside except the tobacco and nothing outside except the manufacturer's name and label.

Mr. HILL. I know; but was it within the scope of the decisions of the courts that Congress had a right to prevent anything being put inside but the tax-paid tobacco?

Mr. YERKES. I think so, undoubtedly. I think the decision of the Supreme Court in that case, decided in 1898, is perfectly clear—that you have the power to say that nothing shall go inside of this bag except the article that pays the tax.

Mr. HILL. But that bag has nothing inside of it except the article taxed; but it has an attached tag or coupon outside.

Mr. YERKES. I do not know whether it has any or not.

Mr. HILL. Well, the other one that you had here—that has a tag on the outside.

Mr. YERKES. This has not anything but the Government notice.

Mr. HILL. I thought the tag that was on the outside was a coupon.

Mr. BONYNGE. Could you have a coupon tag on the outside, under the act of 1897?

Mr. YERKES. No, sir; this is not a coupon tag; and I can tell you why—

Mr. HILL. Could you have one under the act of 1897?

Mr. YERKES. Under the act of 1897? No, sir.

Mr. HILL. On the outside?

Mr. YERKES. No, sir; you could not have had it attached to that package. But where I think they constitutionally could and perhaps did act was that when I bought this package a retail dealer could hand me that, if it was a coupon, at the same time; and I do not know whether the Congress could prevent that. That is a question.

You ask me if this is a coupon. This is the celebrated Durham smoking tobacco. The Durham smoking tobacco at one time did carry a coupon, just as the other great smoking brand of the trust

carried a coupon, namely, the Duke Mixture. They carried coupons to the purchaser until the American Tobacco Company had absolutely secured the entire market for granulated smoking tobacco; and the minute they got control of it they stopped putting coupons into those packages.

Another fact: The testimony that you gentlemen heard in 1903 developed clearly the fact that the use of these coupons increased the price of the tobacco—the tax-paid article—to the purchaser, and increased the profit of the manufacturer using the coupon. Certainly the Congress does not care to continue, without some revenue coming in to the Government from it, a course which increases the price of the tax-paid article to the consumer and increases the profit of the manufacturer as against the consumer.

In your hearing of January, 1904, this letter was read, and in no way was it denied. I saw it just in reading the previous hearings; that was my only information of it. The letter is written by Larus Brothers & Co., tobacco manufacturers, of Richmond, Va. They state:

Replying to your inquiry as to the redemption of tags, will state that we have always been and are now opposed to this method of marketing goods.

They believe that the competition should rest upon the merit and price, without these fictitious values being added.

Some two years ago, at the earnest solicitation of some of our salesmen, we reluctantly consented to redeem tags on one brand of tobacco which we were then putting on the market, and necessarily have been forced to redeem the tags up to the present time. We calculated, in putting this brand on the market, that it would cost us 3 cents per pound to redeem the tags, which amount we included in our selling price.

That is, they added 3 cents per pound to the price of the tobacco they sold.

Since your request for information on the subject, we have carefully figured the exact cost to us up to December, and find that up to that time only 49.8 of the tags sent out have been returned to us for redemption. You will note from the above-stated facts that instead of costing us 3 cents per pound to redeem tags it has only cost us a little less than 1½ cents per pound, and thereby we are that much in pocket on the goods sold.

Mr. BONYNGE. Whose statement is that?

Mr. YERKES. That is the statement of Larus Brothers & Co., who are tobacco manufacturers of Richmond, Va. What type of tobacco do they manufacture, Mr. Campbell?

Mr. CAMPBELL. Smoking and chewing tobacco.

Mr. YERKES. Smoking and chewing tobacco, both.

You will find in this same record a long examination of the man who is, I presume, the largest independent tobacco manufacturer in the United States—my friend, Mr. Bloch. Mr. Bloch is opposed to this bill, and was opposed to the bill previously introduced; and he was submitted to quite a grueling by the members of this committee on the question of coupons. I think, notwithstanding the interest shown by some of the lawyer members of the committee, in putting your questions, that you failed to secure from Mr. Bloch a statement of the cost of this to him or the profit in it to him, or the number of tags that were actually redeemed as compared with the number actually issued of these prize-bearing coupons. He is here this morning, and he may be ready this morning to give you that information. So

that this system results clearly, from this testimony, in increasing the price of the tax-paid article to the consumer and increasing the profit to the manufacturer.

I come now to the question that Mr. Cockran asked with regard to the propriety of this legislation. Let me put it this way, sir: Is it proper, it is wise for the Federal Congress, by legalizing, through legislation, a certain mode of doing business, to create a condition under which a manufacturer possessing unlimited capital can, will, and does go into the market, and thereby destroy the competitor whose resources are limited, and who can not, because of those limited resources, meet the conditions created by such legislation that his competitor does meet?

That brings up the question as to the uses to which these coupons are put. I insist that under the testimony that can be introduced before this committee to-day by men present, I insist that under the testimony that has been taken in this Government case in New York, it is perfectly apparent that the coupon system has been used by this great, dominant corporation, not for simply legitimate and I will say honest business purposes, viz, to increase the consumption of their output, but it has been used absolutely to cripple and destroy the competitor who was in the same field attempting to sell the same class of manufactured article. There are present here men who will swear to you that their resources are not sufficient to allow them to compete with the large corporation in attracting the public attention and the public patronage by offering these prizes, covering, as I say, even horses, it seems (I guess it is the vehicle and harness), and there are some very pretty girls in here, but I suppose it is the sweaters that they are advertising—everything that you can want—solid silver sets, plated ware—

MR. COCKRAN. My question was prompted by the fact that I do not quite understand how those presents are distributed. What relation is there between the coupon and the present?

MR. YERKES. You understand that your act of 1902 denies the right to use any coupon or system where the result depends upon lottery chance, the old form that had been used. Therefore they put in these packages a coupon which had an absolute fixed value—that is, if you sent in 50 of those coupons you got a certain article which might be a pipe or which might be a knife; if you sent in 100, you got another article.

MR. BONYNGE. You got your choice, did you not, of the article you wanted of a certain value?

MR. YERKES. You got your choice, provided you send in the proper number of coupons. Recently, they have adopted the system of using, in certain localities where they are attempting to force out a competitor, cash coupons that have an absolute cash value of one-half cent; ten of them are worth 5 cents. They will put two of these one-half cent cash coupons in packages that are sent to certain portions of the country where there is competition, where there is a local manufacturer whose product comes in conflict and in competition with theirs; and they will send the very same tobacco out into sections where they have not that competition with only one coupon in the package. They will use the coupon as long as the competition exists, as in the case of the Durham and the Duke Mixture, and with-

draw the coupon the very minute that they have bought up the manufacturers, and therefore have absolutely destroyed and assassinated the competition.

These are not fancies—they are facts; and the gentlemen are here ready to swear to them. Here are these cash coupons that go into the cigarette packages, etc.

Now, let me read to you a statement made by a gentleman who is here, to show you how this coupon business is used, not for legitimate advertising, but for destructive purposes.

Some time in April, 1900, the Wells-Whitehead Tobacco Company began the manufacture of cigarettes in the city of Winton, N. C., under the brand "Carolina Brights."

The gentleman who makes this statement was the manager of that plant and is in this room.

The tobacco trust fought this brand, as we thought, unmercifully, but "Carolina Bright" cigarettes continued to grow in popularity, notwithstanding the heavy contest made on them. Finally, and as a last resort, the trust placed coupons in their "Piedmont" cigarette packages, and the sale of "Carolina Brights" began to fall off gradually; and finally the president of the company advised the stockholders to sell (to some one unknown), using the argument with the stockholders that the business of the company was falling off so rapidly that they would have to accept the small price offered for the stock in order to save themselves, which they did.

That sale of the "Carolina Bright" brand and manufactory—I presume it was of the plant as well as of the brand—was completed in the city of New York by the signing of the papers by the president of the company on July 16, 1904. The American Tobacco Company, that had been handling the Piedmont cigarette, in competition, with the coupons, was the purchaser. That very day a circular was issued by the American Tobacco Company increasing the price of the Piedmont cigarette from an average of \$3.30 per 1,000 to \$3.80 per 1,000, and in that circular was the statement that coupons would be withdrawn from Piedmont cigarettes from that date.

Is that not a confession and an admission that the coupon, so far as the Piedmont cigarette was concerned, was not used for legitimate advertising purposes? The very minute they destroyed and purchased the competitor they withdrew the coupons from the Piedmont brand.

The Tobacco trust was the purchaser of that "Carolina Bright" stock, and from July, 1904, until the spring of 1905 no coupons were placed in Piedmont cigarettes, as the trust had bought up the only independent competitor they had in the South. In December, 1904, the Ware-Kramer Tobacco Company began business. Mr. Ware, who is present, is the gentleman who makes this statement. He is the same man who was manager of the Wells-Whitehead Company, and is now connected with the Ware-Kramer Company. The brand they adopted was called "White Rolls."

The day we put the "White Rolls" cigarettes on the market the price was cut on "Carolina Brights."

Still manufactured by the trust—

And the trust fought us with that brand, bearing the union label, and everyone connected with the factory, from the president down, insisting that the "Carolina Brights" was an independent factory and that the trust had no connection with the factory. These statements have been proven to be absolutely false.

That is not all of it, gentlemen. At previous hearings held before this committee men appeared here, fighting this proposed legislation

as independent tobacco manufacturers, when, as a matter of fact, their plants were owned, operated, and conducted by the American Tobacco trust, without the knowledge of the public; and we have absolute proof of that fact. I have here a list of the independents that had sold out to the trust; and yet, by direction of the trust, they were being operated under their original firm or partnership names, so as to deceive the public. And those men appeared here as representing the independents, when their plants were owned and they were employed by the American Tobacco Company.

The CHAIRMAN. Does your statement cover all the independents that appeared before the committee?

Mr. YERKES. No; oh, no, sir. It covers, however, one big plant in Louisville, whose representative stood here and opposed this measure as an independent, when his plant was owned absolutely by the American Tobacco Company; and, as I understand it, the proof shows that he had letters in his pocket right at that time from the American Tobacco Company directing him what to do. There was a case in Cincinnati even worse than that.

The CHAIRMAN. A practical question occurs to me right there, Mr. Yerkes. Suppose we should be able to suppress this coupon business. As you say the coupons now are, sometimes they give credit for half a cent apiece for the coupons.

Mr. YERKES. Yes, sir.

The CHAIRMAN. What is to hinder their taking off half a cent on the package of tobacco, and selling two packages for a cent less?

Mr. YERKES. That they do not seem to do; that they do not do. It is the attractiveness, Mr. Chairman, of the lottery that they are after. It is the chance.

The CHAIRMAN. But what is to prevent that? What is to prevent their cutting out the independent people in that way in a certain locality?

Mr. YERKES. That has been done more than once—the price being reduced to half.

Mr. COCKRAN. In the one case they can do it privately; in the other case they would have to do it publicly. That is the difference.

Mr. YERKES. In one case, Mr. Payne (your case), they would give it with every package; and in the other case, when the coupons are put up in the package, not half of them are redeemed.

As to the amount of the tobacco business that is in the hands of the American Tobacco Company and their allied companies, commonly called "the trust," I hold in my hands a copy of the petition that was filed by the Government against the Tobacco Company, in which the amount of the business done by them is stated. I presume it is fair to assume that the Attorney-General of the United States would not have filed a petition of this kind without most searching investigation and verification of the accuracy of the statements contained. Certainly they were at it several years before they filed it. I am going to read this, just as prefatory to a remark on the snuff question:

The burley type of tobacco: Annual production, approximately 185,000 pounds; grown in the central and northeastern sections of Kentucky, and a few counties of Indiana, Ohio, and West Virginia. It is consumed mostly by

domestic concerns for smoking and plug tobacco. Defendants (that is, the American Tobacco Company and the allied companies) purchase about 90 per cent of this tobacco.

So that it is fair to assume that they do control 90 per cent of the chewing and smoking tobacco that is manufactured in the United States. Really, I expect, from what I know, that it is a little more than that.

Now take another type, called the "bright yellow," produced in Virginia, North and South Carolina. According to this petition, 180,000,000 pounds are grown; the defendants purchase of this amount 75 or 80 per cent.

The dark western type, produced in southern Kentucky and Tennessee—of course the great majority of this tobacco is exported, but the defendants purchase 35 to 40 per cent of that and 50 to 60 per cent of the same type of tobacco grown in the Green River and Upper Cumberland country. In the case of that, again, the great bulk of it is exported.

The tobacco that is grown in Maryland and eastern Ohio is exported.

Virginia air-cured tobacco; annual production, 8,000,000 pounds; used for manufacturing; the American Tobacco Company, the defendant, purchase 90 per cent of that.

So that you may say that at least 90 per cent of the manufactured chewing and smoking tobacco in the United States is produced by the American Tobacco Company, either under its own name or through the name of these subsidiary companies that it continues (as shown by this petition) under their original names.

Now, as to the system used: There is present a snuff manufacturer from the State of Massachusetts. I am informed that the trust controls about 98 per cent of the snuff that is manufactured in the United States. But they are reaching out after that 2 per cent. It interferes with them in some few localities. And how do they do it? They make a new brand of snuff called the "Checkerberry Snuff." It is put up in 1-ounce decorated tin cans, which retail for 5 cents each, of which there are 28 packages in a carton, sold as 1½ pounds, which of itself gives four ounces free. Now let us look at the value of that. This is prepared by a snuff manufacturer:

The cost of the tin cans, the cost of the flavoring, the cost of the internal-revenue stamp, of the cartons, of the packing, printing, and freight, and of the coupons—what coupons are they putting in that? A coupon with a cash value of 2 cents. That is, in each carton, 1 ounce, you find a coupon of the value of 2 cents. The total cost, then, to the American Tobacco Company of putting out this snuff, without counting the cost of the snuff itself, is 99 cents and a fraction. The jobber sells this 28-ounce package for 84 cents. The manufacturer sells the same package to the jobber at 84 cents less 10 per cent. It nets the manufacturer, on the wrong side of the ledger, 25 cents. In other words, he sells it at a net loss of 25 cents, not including the cost of the snuff, the cost of manufacture of the snuff, or any other cost, including the selling cost. It may be said that only about 60 per cent of the tags or coupons are redeemed; but common sense will tell anyone that a cash coupon for 2 cents is no more likely to be thrown away than any other kind of money, particularly when these coupons are redeemable at any store that sells this snuff. That is, a child can

go in with a coupon worth 2 cents and buy a couple of sticks of candy with that coupon.

Not only that: There are advertisements here showing that billiard rooms, for instance, accept these very coupons in cash payment for men who play billiards with them. They are accepted right along. Those advertisements are here.

Gentlemen, the small dealer, the small manufacturer, can not possibly compete with that system. He can not afford to do it. He can not run out the big man by selling at a loss for two months or six months or ten months. This system is a system that is provided for by Federal legislation. I believe the Tawney bill is absolutely constitutional. If it is not, it can be made so in a minute, if you think there is any question about it, and as to the propriety of the Congress taxing a system, a mode of business, of that kind, it seems to me that under the circumstances (and I have not told one-half of what these witnesses here can tell you about the mode of doing this business) we have a right to appeal to you in this case for the passage of this bill.

The CHAIRMAN. Are there others who desire to be heard in the affirmative on this bill?

Mr. YERKES. Yes, sir; there are one or two manufacturers that I would like to have heard.

The CHAIRMAN. About how much time do they want? I think the committee will have to adjourn until to-morrow. I do not see how it is possible to hold a hearing this afternoon.

Mr. YERKES. Here is a gentleman that says he would like to be heard for one minute—a snuff manufacturer from Massachusetts.

The CHAIRMAN. We shall have to go to the House now. Without objection, the committee will be adjourned until 10 o'clock to-morrow morning.

(The committee thereupon, at 11.50 a. m., adjourned until Friday, April 3, 1908, at 10 o'clock a. m.)

FRIDAY, *April 3, 1908.*

The committee met at 10 o'clock a. m., with Hon. Sereno E. Payne in the chair.

Present: The Chairman, and Messrs. Dalzell, McCall, Needham, Calderhead, Gaines, Bonyng, Longworth, Clark, Cockran, Underwood, Granger, Pou, and Randell.

STATEMENT OF HON. JOHN W. YERKES, OF WASHINGTON, D. C.—
Continued.

Mr. YERKES. Yesterday morning I remarked that there were a number of gentlemen who had signed a protest against bills of this kind, independent manufacturers. Since that time I have found, in reading over the bill filed by the Government in its suit against the American Tobacco Company, that a number of those independents belong to the trust now, that they have been bought, and I have the names of those with me, which I can furnish.

The CHAIRMAN. File those, so that they will go into the record.^a

Mr. YERKES. Yes, sir; I will put them in the record. Another point was suggested by one of the members after the hearing, why

not go back to the Dingley bill? The answer to that is this, and I tried to give it yesterday, but I do not know whether the member heard it: That after the passage of the Dingley bill the tobacco trust, and perhaps others who use this coupon system or desire to use it, would advertise in every way the redemption of a certain portion of the package. They could not advertise it on the package or in it, but they advertised it in other ways. This would prevent that unless the parties paid the tax. The next point I want to call attention to is that these coupons are used largely for destructive purposes, not for legitimate business advertisement, and that can be demonstrated beyond a doubt if you will notice the places in the country where they use these coupons and the different packages in which they use them.

The CHAIRMAN. If this bill were passed, what is to hinder the American Tobacco Company from going into the district of another manufacturer and selling his goods at a half a cent or a cent a package less?

Mr. YERKES. There is nothing on earth to prevent that, Mr. Chairman.

The CHAIRMAN. That would be just as effective as this, would it not?

Mr. YERKES. I do not think it would be, and I do not believe they think it would be, because they could do that to-day just as well as they could to-morrow if you pass this bill and it became a law. They prefer this system to the other. In that case the Congress would not be lending aid to it; in this case the Congress, under this act, provides a method which they can use and allows the tax-paid stamp to cover not only the tax-paid articles, but to cover a certain share or proportionate part in another article. That is all I want to add this morning.

STATEMENT OF MR. HUGH CAMPBELL, OF RICHMOND, VA., REPRESENTING THE INDEPENDENT TOBACCO MANUFACTURERS' ASSOCIATION.

Mr. CAMPBELL. Mr. Chairman, this bill, introduced by Mr. Tawney, is antitrust legislation pure and simple, a practical business method in the interest of the weak against the strong. It takes from one of the greatest, certainly the greediest, most unscrupulous of all the trusts in the country, its most effective death-dealing weapon, and it restores to its proper plane the marketing of manufactured tobacco. If, through your wisdom, this bill becomes law, the success of brands will hereafter depend upon the quality of the tobacco, and not upon fake schemes widely advertised.

Until 1890 there was free and active competition throughout the United States in the manufacture and sale of tobacco; since then, year by year, the manufacture of tobacco has passed more and more into the control of the American Tobacco Company until it now has a vast proportion of the business. Still not satisfied it is now fast acquiring control of the distribution of tobacco to consumers and gradually its retail stores are getting possession of the business in the large cities of the country and unless curbed will sooner or later drive the independent retailers out of business altogether. When I state to you as a matter of fact that this American Tobacco Company has a larger capital in bonds and stocks issued than the Standard Oil Com-

pany you will realize how difficult it is for any independent manufacturer or retailer to cope with its might and power. With every sale of tobacco in its retail stores it gives a coupon good for presents which frequently have a more impressive effect upon the purchaser than the quality of tobacco he buys.

In 1902 Mr. Otjen, of Wisconsin, introduced in Congress a bill to accomplish that which this bill is intended to accomplish. That Otjen bill was favorably reported by your committee and passed the House almost unanimously, but not until late in February, 1903, and upon reaching the Senate it failed, there being no time to consider it. At the next session of Congress Mr. Tawney introduced a similar bill, and at the hearing before your committee it appeared that the independent tobacco manufacturers were widely divided in regard to it, but that was simply on the surface, for, as has been developed in the equity suit brought by the Government against the American Tobacco Company, it appears that the business of many of the independent tobacco manufacturers who appeared here before you was owned and controlled by the trust, and they came here by the direct instructions of the trust and under the guise of independent tobacco manufacturers and argued against the bill. Then, as now, the great majority of the real, true, independent manufacturers were united in their desire for the passage of this bill, feeling that it will give greater relief from the thralldom which the trust has imposed upon the manufactured tobacco business than anything else that can be conceived. From every tobacco-growing State in the Union there are now loud cries by reason of the lack of competition when growers of leaf tobacco try to sell their product, and if you will take away from the tobacco trust the right to pack coupons in smoking tobacco or redeem tags from plug tobacco you will greatly protect and encourage the few remaining independent tobacco manufacturers, who are the only competitors the trust has in the purchase of leaf tobacco. It is this lack of competition that has aroused dissatisfaction among growers of tobacco in Kentucky, Tennessee, and other States to a point which is deplorable.

No better evidence of the intent and purpose of the coupon warfare which the trust has waged against competitors can be placed before you than that of granulated smoking tobacco, as when there were numerous independent manufacturers of this class of smoking tobacco the trust packed coupons in both "Duke's Mixture" and "Durham Bull," but having acquired the business of Leidersdorf, of Milwaukee; Spaulding and Merrick, of Chicago; Catlin, of St. Louis; August Beck, of Chicago; Penn, of Reidsville, and others, the trust discontinued packing coupons in these brands, but it now has 98 per cent of the granulated smoking-tobacco business. It has not, however, discontinued packing coupons in cut-plug smoking tobacco, against which it still has some competition. I show you "Fore and Aft," in which it packs two coupons in each 1½-ounce package, equivalent to nineteen coupons in a pound of tobacco. This brand is designed to kill off "Sensible," manufactured by Larus Brothers Company. I also show you "Union Leader," which has either one or two coupons in every package, varied according to the strength of "Central Union" in the different localities in which they are sold.

The CHAIRMAN. Those coupons are after the manner of trading stamps?

Mr. CAMPBELL. No; this one in "Fore and Aft" is a money slip, in this particular package at this particular time, varying according to the necessities of the trade. They put two money slips in each package. This is a package which I have opened, and here is an unopened package containing the same thing, I have no doubt; I have not opened it.

Mr. YERKES. There is competition in that class of tobacco?

Mr. CAMPBELL. This brand was gotten up unquestionably to fight Larus Brothers' "Sensible" brand, exactly the same thing—the same kind of tobacco. There is keen competition on it.

Mr. YERKES. They have competitors on that class of tobacco? They put these two coupons in those packages?

Mr. CAMPBELL. Yes, sir.

Mr. YERKES. Now, take the Durham Mixture and the Durham tobacco and the Duke's Mixture, they have no competition on that class of tobacco, and no coupons are used?

Mr. CAMPBELL. They have taken the coupons out. I also draw your attention to the fact that the trust has a regular brand, a 5-cent package of slice plug, a dry plug, that they have had for a great many years, but it had an established trade, so, instead of putting coupons and fighting Larus with that brand, they got up this new fighting brand that had no trade and spent their money on this. Then they put it out without any manufacturer's name on the package at all, because in New England and some parts of the country there is some antipathy to trust-made tobacco.

Mr. YERKES. Take these independent factories; have they not in many cases, and are they not to-day continuing the manufacture of that tobacco under the name of the former owner?

Mr. CAMPBELL. Invariably.

Mr. YERKES. So that the tobacco comes on the market as being made by an independent and not by the trust?

Mr. CAMPBELL. Invariably, yes.

Mr. DALZELL. What does that package sell for?

Mr. CAMPBELL. Five cents, 48 cents to the pound.

Mr. BONYNGE. What are those coupons worth?

Mr. CAMPBELL. These particular coupons, a quarter of a cent each.

Mr. BONYNGE. A half a cent to the package?

Mr. CAMPBELL. A half a cent to the package, and the consumer gets 19 cents to the pound. Here is another brand which is spread out all over the country; that is the independent brand which this other was gotten up to kill off. In this package of "Union Leader" they put one or two coupons, according to the condition of business. This package has no particular territory. Where this brand is strong, they put two coupons in every package; where it is not so strong, they only put one. Ordinarily they put up this advertisement, "Save the coupon." They do not recommend the tobacco; they do not try to advertise the quality of the tobacco, but "Save the coupon." Where this "Central Union" is strong, they put up "Double coupons."

STATEMENT OF MR. BENJAMIN PEARSON, OF MASSACHUSETTS.

Mr. PEARSON. Mr. Chairman, I will take but a very few minutes. I want to tell you the iniquity of the coupon system and how far it can be carried; that the determination is to crush out the competitor,

and I have prepared a memorandum here which I will give to each man so that you might see just how far it might be carried out.^a

Mr. YERKES. How much of the snuff produced in the country is trust controlled?

Mr. PEARSON. Ninety-eight per cent.

Mr. YERKES. How many brands have they?

Mr. PEARSON. They are innumerable; 50, probably.

Mr. YERKES. In how many brands do they use the coupons?

Mr. PEARSON. Only one.

Mr. YERKES. When did they commence that?

Mr. PEARSON. About three years ago.

Mr. YERKES. Where is that brand sold in which the coupon is used?

Mr. PEARSON. Where our "Red Top" has a hold on the market, in New England.

Mr. YERKES. Wherever the independent sells they put out a coupon package, but wherever the independent does not sell they do not issue the coupon?

Mr. PEARSON. I do not hesitate to say that. I ask relief from the committee. Here is a bill of that snuff, what it cost, and you find that in each one of those packages there is a 2-cent coupon. I will say just one thing further. It is the custom down in that country to take—break open those boxes, take the coupons out, redeem them for 2 cents each and sell those 5-cent packages 10 for a quarter. I thank you, gentlemen.

STATEMENT OF MR. W. L. CROUNSE, OF WASHINGTON, D. C.

Mr. CROUNSE. Mr. Chairman, I simply want to file the following brief prepared by Mr. Joseph F. Cullman, jr., the president of the National Cigar Leaf Tobacco Association:

WASHINGTON, *March 27, 1908.*

MR. CHAIRMAN AND GENTLEMEN: As president of the National Cigar Leaf Tobacco Association, an organization that embraces within its membership a large number of packers and distributors of domestic cigar leaf tobacco and importers of foreign cigar leaf, I desire heartily to indorse the movement looking to the enactment of a law that will put an end to the use of redeemable coupons or other devices sold with statutory packages of cigars, cigarettes, manufactured tobacco, etc. I earnestly hope that your committee will take early and favorable action, and especially that your bill may be put through the House in time to receive consideration in the Senate at the present session.

Section 10 of the Dingley tariff law imposed a very salutary restriction upon the gift enterprise as applied to the tobacco trade, and its repeal, based, as we believe, upon a gross misapprehension, was greatly regretted by the members of this association. Inasmuch, however, as methods for the evasion of the Dingley law had already been devised, and especially because it was held to prohibit the use of what is now regarded as legitimate advertising matter and the devices by which manufacturers identify their goods, the tobacco trade will be glad to see enacted in its stead such a comprehensive measure as that now before your committee, which, while taxing redeemable coupons, would permit the use of cigar bands, tags, etc.

^a For this memorandum see pages 186-187.

This association strongly indorsed the so-called Otjen-Tawney anticoupon bill, which passed the House by a vote of 170 to 10 and failed of action in the Senate only because it did not reach that body until the day of final adjournment. This measure was finally abandoned because of its doubtful constitutionality, but the support which it received from the independent tobacco trade throughout the country was a fair index of the strength of the proposition that tobacco products should be sold strictly on their merits.

With regard to the bill before your committee introduced by Representative Tawney, of Minnesota, I desire to say that this association indorses unreservedly the object at which it is aimed and the principle upon which it is based. We are prepared, however, to accept any modifications which your committee in its wisdom may deem desirable, especially in the event that such changes may appear to you to be necessary to safeguard its constitutionality.

It is significant that the most of the reputable manufacturers throughout the tobacco trade have rejected all the thousand and one coupon schemes which have been brought to their attention since the repeal of section 10 of the Dingley Act. As in the case of producers and dealers in other industries, they believe that it is to the interest of the consumer to put as much value as possible into the goods he buys and not to seek to induce him to purchase something he does not want by offering him a cheap premium. In isolated cases the competition of similar articles has induced a few manufacturers to employ coupon schemes, but a law that would abolish all such devices and put all manufacturers on an equal footing would, I think, be welcomed almost unanimously throughout the tobacco industry.

The cigar trade throughout the United States was several years ago subjected to the demoralizing influence of a series of so-called estimating or guessing contests. One of these, conducted by the Florodora Tag Company, exerted so pernicious an influence upon the cigar trade that the National Cigar Leaf Tobacco Association deemed it advisable to test the legality of these schemes under the antilottery laws of the State of New York. After a stubborn contest the New York State court of appeals unanimously decided that these contests were lotteries. Immediately after the announcement of this decision the associations took the matter up with the Post-Office Department at Washington in the hope that the Postmaster-General would see his way clear to establishing a comprehensive rule covering all such contests. The Attorney-General, Mr. Moody, now a justice of the United States Supreme Court, in an opinion held that the so-called estimates depended largely upon chance and were therefore conducted in violation of the Federal antilottery law. The opinion thus rendered was promptly adopted by the Post-Office Department and has since exerted a most salutary influence, not only throughout the tobacco trade but in many other lines where the demoralizing influence of these schemes had been severely felt.

We believe that Congress can perform no more important work in the interest of good commercial ethics than the abolition of redeemable coupons sold with statutory packages containing tobacco products. The interests of manufacturer, dealer, and consumer alike will be subserved by the passage of the pending bill.

JOS. F. CULLMAN, JR.,
President National Cigar Leaf Tobacco Association.

STATEMENT OF MR. F. D. WARE, OF NORFOLK, VA.

Mr. WARE. Mr. Chairman and gentlemen, I desire to read a letter from a traveling salesman, date March 28, 1908, but I would rather not call this man's name, because it would result in his being discharged, and he is nothing but a salesman. The letter in part is as follows:

I believe anything will sell here with coupons and nothing without them. * * * I heard that ——— (salesman of the American Tobacco Company) said they were going to kill "White Rolls" (a brand of cigarettes put out by the independent tobacco manufacturers, the Ware-Kramer Tobacco Company) in Pennsylvania and New Jersey. * * * They have killed us here (Richmond, Va.) with two coupons, and now they will take one out down here and put all their work up North.

I, too, am calling for relief, and I will give you my position: This package of cigarettes, "Piedmonts," contains two coupons. It is a fighting brand, as Mr. Campbell has outlined. This brand is sold in territory where we operate and not sold in territory that we have not covered. They follow us just like a blight. They have driven us from the South to the North and gradually toward the West, and unless we can get some relief we are out of business. That is the thing briefly stated. We do not want to ask anything except simply relief.

When our company was organized I was promised by parties connected with the tobacco trust that we would be crushed by fair means or foul. They tried what evidently appeared fair means to themselves by cutting prices, starting all kinds of rumors that the Ware-Kramer Tobacco Company belonged to the trust, besides having their subsidized companies, which were posing as strictly independent companies, use their utmost endeavor to injure us, all of which did not accomplish their purpose, and as a last resort the trade was notified that the trust would place coupons in their cigarettes good for valuable presents, further notifying the trade that Piedmont cigarette box fronts would be redeemed until the coupons were printed and placed in the boxes.

This did not seem to kill us fast enough, though it did hurt us to some extent, and they then made a cash offer of a half a cent each for the coupons. This hurt still more, but did not result in total annihilation, a condition it seemed they were determined to create, and later two coupons of a half a cent valuation each were placed in their Piedmont cigarette.

This has driven us gradually from one territory to new fields, and if continued is bound to result in our downfall. In the South, where we were especially strong, our goods have been killed. As fast as we get a trade to some extent established, the trust brings forward its strongest fighting arm, the coupon, which appeals to the cupidity of the people, and they discontinue the use of cigarettes and smoke coupons.

Mr. Ware filed the following letters:

LOUISVILLE, KY., March 31, 1908.

DEAR SIR: As independent tobacco manufacturers, we respectfully petition your honorable committee to report favorably H. R. 16085.

Yours, truly,

STRATER BROTHERS TOBACCO CO.
WILLIAM E. STRATER, *Secretary*.

The CHAIRMAN WAYS AND MEANS COMMITTEE,
House of Representatives, Washington, D. C.

LOUISVILLE, KY., *March 31, 1908.*

DEAR SIR: We are deeply interested in the Tawney anticoupon bill, which provides for taxing coupons and other articles of value given away with tobacco, snuff, cigars, and cigarettes. We feel that this is a powerful weapon in the hands of the tobacco trust and in many instances aids them in driving competition out of the market. Independent tobacco manufacturers can not use this method on account of not having the organizations necessary to get sufficient results to attract the purchaser. We therefore earnestly urge you to report this bill favorably and oblige

Yours, very respectfully,

AXTON-FISHER TOBACCO CO.
Per W. F. AXTON, *President.*

The CHAIRMAN WAYS AND MEANS COMMITTEE,
House of Representatives, Washington, D. C.

STATEMENT OF MR. JOHN HALL JONES, 320 BROADWAY, NEW YORK, REPRESENTING THE WHELAN TOBACCO COMPANY, OF ROCHESTER, N. Y.

[For additional statement of Mr. Jones see p. 187.]

MR. JONES. Mr. Chairman and gentlemen, I represent the Whelan Tobacco Company, of Rochester, N. Y., one of the independent tobacco concerns which uses coupons in its business and which is opposed to this bill.

Before taking up the principal part of my argument, I wish to refer briefly to the argument made by Mr. Yerkes yesterday to this committee and to make a short running comment upon it. The first item that I wish to note is that Mr. Yerkes bases his claim to the constitutionality of this law upon the fact that it affects all revenue paying tobacco, and I wish to say simply that if this bill applied to every manufacturer and said that every manufacturer of tobacco who places a red band around his hat or who engages in business from the hours of 9 to 12, or who packs his product in a pink package or a red package, it would also apply to every tobacco manufacturer and to every manufacturer paying revenue, so that the fact that the bill applies to every tobacco manufacturer who pays revenue is no reason for its existence, because you may find any other innumerable similarities which would apply to every tobacco manufacturer, but which would not make the bill any more valid on that account.

MR. UNDERWOOD. Do you represent an independent concern?

MR. JONES. Yes, sir.

MR. UNDERWOOD. Do you favor this bill or oppose it?

MR. JONES. I am opposed to the bill. The whole argument that has been placed before this committee shows that the object of the bill is to prohibit the coupon business. The object of the bill is not to raise revenue and Congress has not been called upon for any excess of zeal in the matter of raising revenue out of tobacco at the present time. There are innumerable other ways that are perfectly legitimate and open for Congress to raise revenue. The object of the bill is avowedly to destroy the coupon business as connected with tobacco. Let us see what the coupon business is, and I do not want you gentlemen to take my word for the coupon business, but I will tell you what the supreme courts of the various States have defined, logically and clearly, the coupon business to be.

As you know, tobacco is packed in statutory packages. A package shall contain so much weight of tobacco, and you have heard about it containing nothing else. At the present time it may contain an

immeasurable coupon, a coupon of immaterial weight, but it must contain just so much tobacco and no more. You could not go out in the market to-day and buy nine cigarettes from a manufacturer and you could not go out in the market and buy an ounce and three-quarters from any tobacco manufacturer or retailer. You have to buy the statutory package, and if any of you smoke, you know how cigarettes are sold. Another tobacco company which I represent packs 10 cigarettes in a package of that kind. It is against the law for them to pack 9 cigarettes, or 12 or 13 or 14; they have to pack a certain amount of tobacco or a certain number of cigarettes in the package. There is no limit fixed by the law upon the amount of money they shall charge for the package. They can charge 10 cents for it or 3 cents for it; they can charge 5 cents for a 3-ounce package or they can charge 10 cents for a 3-ounce package of another kind. How, then, are they going to give the customer anything more than the package they are actually selling? If they advertise to give it to him for less money—that is, an actual sale of so much tobacco for so much money—they have to give him so much tobacco; they have adopted this means for giving the discount, selling so many cigarettes and giving the buyer something more than the actual amount of tobacco which they have disposed of to him.

The coupon business is as old as the recent modern enterprise in business, within fifty years, when the old corner grocery store developed into the department store and scientific methods began to take hold of business. Previous to this coupon business, the corner grocery man poured in a few more grains of salt or a little more tea or a little more coffee, so that the scales went solidly down and the customer was satisfied; but when the coupon business began, the coupon was adopted for the purpose of giving the customer his exact measure and at the same time giving him something else. That coupon represents two distinct elements; it is an inducement to the customer to select that brand, and it is a little stronger tie to the customer to bring him back to get some more. If it was one cent which was delivered at the time of the purchase to the customer, the relation between him and the seller would cease, but he only gets a part, a fractional part, of the right to get an article. He gets, say, the one-seventieth; as has been shown here, for 30 coupons a customer gets a jackknife or something else, for 2,500 he gets a grand piano, whatever it is, but he gets only a fractional part of the complete right at one time; he does not get it all at the same time; it is an infinitesimal discount. When people buy their goods in large quantities, these tobacco manufacturers, independents and others, expect 10 per cent off for cash, 5 per cent on ten days, and 3 per cent on thirty days; we all know that as business men. These coupons have risen out of that very proposition, but our coinage being as it is, they can not give a discount in cash on very small purchases. You can not get a discount on a 10-cent purchase anywhere. So this method of splitting up the discount has been adopted by giving the customer something which at the same time is an inducement for him to come again and holds him to the particular seller.

The CHAIRMAN. Will you state what percentage of those coupons are actually redeemed by goods and otherwise, on an average?

Mr. JONES. I can not say what percentage are redeemed; no, sir.

The CHAIRMAN. Of course, some of them are thrown away or lost.

Mr. JONES. They may be; the receiver of this discount has a right to do with it as he chooses. He may either accept this, which is an offer of goods to him, or he may reject it; he can do as chooses with it.

The CHAIRMAN. Has not the New York legislature recently passed a statute in regard to trading stamps?

Mr. JONES. It has, sir.

The CHAIRMAN. Requiring that they shall be redeemed by money?

Mr. JONES. It passed such a law, and in 102 Appellate Division, 103, in the *People v. Zimmerman*, that law was declared unconstitutional, following the case of the *People v. Gilson* and other cases on that line, and I will say here now that the cases on this subject do not make any distinction at the present time between a coupon which is packed in a package of tobacco and the trading stamp which is given by the merchant. The only difference between those two methods of doing this discount business or making this gift is that the merchant employs a trading stamp company to redeem, and in the other case the manufacturer redeems them himself, and it has been shown again and again, so often that now there is no question about it, that there is no legal distinction between those two methods; that the manufacturer may redeem the coupon himself, or he may employ another concern to redeem it for him.

I will proceed to give you what the courts have defined this business to be. In *ex parte McKenna* (126 Cal., 431), the court said:

In support of the ordinance it is contended that the trading-stamp device is a lottery and therefore immoral. But we can not see that it has any resemblance to a lottery. There is in it no element of chance and nothing in the nature of gaming. It appears to be simply a device to attract customers, or to induce those who have bought once to buy again, and in this aspect is as innocent as any other form of advertising.

That language was used in 101 Va., 853, in the case of *Young v. The Commonwealth*. In New York, in 72 Appellate Division, 308, in the case of *People v. Dycker*, the court said:

It is simply one of the infinite variety of devices which are resorted to by tradespeople in these days of sharp competition to promote the sale of their goods.

The CHAIRMAN. That case arose in Albany, did it not?

Mr. JONES. It arose in Albany, yes, sir. In Vermont, in the case of *State v. Dodge* (76 Vt., 197), the court said in reference to the coupon business:

It does not differ from the ordinary business, except in the method of advertising and in lawful trade inducements. It is true that this method of doing business may enable a trader to do more business than he otherwise would and more than his competitor across the street, who does not choose to incur the expense incident to this method of advertising and increasing his business, but this furnishes no reason for prohibiting the business.

In the Federal court in Massachusetts, Judge Putnam, in the case of *The Sperry & Hutchinson Company v. Temple* (137 Fed. Rep., 992), said:

The trading-stamp business is essentially legitimate, and, so far as the court can discover, it is the only way in which the small purchaser practically obtains a discount for immediate payment, whether that immediate payment is in case or anything else.

In Georgia, in the case of *Hewin v. Atlanta* (49 S. E., 765), the court said:

In its ultimate analysis the use of trading stamps by a merchant is simply a unique and attractive form of advertising resorted to for the purpose of increasing trade. * * * When resorted to for the purpose of increasing the business to which it is annexed, it

occupies the same relation to that business as newspaper advertising, circulars, dodgers, and the like.

In California, in *ex parte* Charles F. Drexel, the court said, and this is a very important definition of this coupon method:

Indeed, an ordinary trading stamp, or coupon is, in substance, a mere form of allowing discounts on cash payments, and its issuance is entirely harmless and within the constitutional right of contract. It may be distasteful to certain competitors in business; but the latter should remember that if a statute suppressing it be upheld, then other oppressive statutes might be enacted unlawfully interfering with and hampering business and the right of contract to which these competitors would strenuously but vainly object.

So much for the legal definition of what the business is. It is a method of advertising, a method of giving a discount. I will show the committee that further the courts have distinctly decided that this is a proper gift by the salesman, by the retailer, to his customers. In Georgia, in the case of *Hewin v. Atlanta*, referred to above, the court said:

If the delivery of trading stamps to a cash customer is apparently voluntary as between the merchant and his customers, the transaction being without consideration, a mere gift, then we suppose that no one would contend that in delivering the stamps under such circumstances the merchant was engaged in a business at all.

That case arose under a taxing statute which taxed merchants who gave coupons or stamps to their customers, and the court decided that that was not a business at all; that that was a mere incident to the general business of selling goods, and the legislature in that State could not select a mere incident of a man's general business which paid a tax itself and impose a separate and distinct tax upon one of the incidents of that business.

In New York the court has repeatedly passed upon questions of this kind, but I will cite just a word from the decisions there. This is all preliminary to the main point of my argument. In New York a case arose under a statute which provided, as your chairman has suggested, that every coupon given by a merchant should have on it a cash valuation. The case arose on the selling of a package of tobacco with which a coupon was given, and the court said:

We therefore start out with the proposition that the defendant, in offering and giving a prize as a gratuity to induce the purchase of tobacco, was engaging in a lawful business, and any act which hampered or interfered with this transaction was repugnant to the clauses of the Constitution of the United States and of our own State, which guaranteed him liberty of person and property in carrying on a lawful vocation. * * *

Inasmuch as the right of a person in trade to give something additional to a purchaser with the article sold as an inducement to the purchase had been held in the *Gillson* case to be legitimate and protected by the Constitution, it would seem as if the section referred to was plainly within the condemnation of the spirit of that decision.

We have, consequently, if this new effort is to be upheld, a perfectly lawful business emasculated, for the pivot on which it turns is the promise to deliver some article of merchandise to the purchaser as an inducement to the purchase, and if money is to be the *gratuity*, then that ends the business, for that would mean that the seller reduces the purchase price in each instance by a definite sum.

The pith of each transaction is a gift to the purchaser, and as an inducement to secure trade, and generally for cash.

It may be that people in moderate or straitened circumstances are prone to purchase beyond their means by the incitement of a gift after a stated amount has been expended.

Mr. UNDERWOOD. Are you contending that it is beyond the constitutional power of this committee and Congress to prescribe what shall go into a package of tobacco?

Mr. JONES. Oh, no; not at all. I say they can prescribe that if they choose; they have done that, and then they have undone it.

Mr. UNDERWOOD. Then you admit that it is within the power of Congress to pass this bill if it is expedient to do so?

Mr. JONES. No; that is a different proposition entirely. I will touch on that in a few minutes.

Mr. UNDERWOOD. I do not see why you are citing those cases if you do not question the constitutionality.

Mr. JONES. I do question the constitutionality of it, but not on the question you suggest. In North Carolina the court said:

The scheme, if such it may be termed, was only a mode of advertising by these merchants who entered into it. The articles of property given away by the company, of which the appellee was the manager, was not by lot or chance.

That brings me almost to the final point on the definition of gift, but I will state one more case, a case in 22 Rhode Island, case of the State of Rhode Island *v.* Benjamin Dalton, where the court gave one of the best recent opinions decided along this line, except in the case of *The People v. Gilson*, which was decided by Judge Peckham. In that case the court said, the question involved being an act prohibiting merchants from giving coupons to their customers:

It is to be observed that the act does not prohibit the vender himself from giving or "throwing in," as it is sometimes termed in common parlance, some other article in addition to that sold, but only prohibits the seller from giving anything in the nature of a check or order upon some other person which shall entitle the holder thereof to obtain from some other person some article of merchandise in addition to the thing sold. In other words, the act recognizes the right of a person to give away an article of merchandise in connection with and as an inducement to the making of a sale of some other article, but provides, in effect, that the giving of such additional article must be done by him directly, and not through a third person. We fail to see that there is any substantial difference in principle between the two methods, or that either bears resemblance to lottery.

The thing sought to be accomplished by the vender is the sale of his goods by means of the inducement held out to the purchaser in the form of a premium; and if he may himself give and deliver the premium, as he clearly may, he may also give it through a third party.

I think I have established two propositions—one that this method of advertising is recognized as a perfectly legitimate, a perfectly lawful means of advertising by the States whose decisions I have cited; that it is an advertising device; that it is in the nature of a discount given to the purchaser, and that it is a gift, a free gift, given to the purchaser by the person who is selling the goods.

Mr. COCKRAN. Mr. Yerkes yesterday practically agreed with your description of this transaction, that it was practically a rebate or a discount, but he added that in some places the discount was different, that the companies used that method of discount so as to make competition fierce in one place and less fierce in another.

Mr. JONES. It may be that the American Tobacco Company does that, but the company that I represent and various other independent companies do not do it, and it is immaterial to us what the American Tobacco Company does. What we want is the protection of the right which we claim we have, and if you see fit to destroy a business which is conducted as the Whelan Company is conducted simply in order to reach the American Tobacco Company, then you

have another consideration to look into; but I say that in regard to that, this method, even though it is pursued, as you say——

Mr. COCKRAN. I do not say it.

Mr. JONES. Even though it be pursued in that way, I say it is a fair method of competition; it is competition. If we give a discount of 2 or 3 cents with a statutory package of tobacco, or if we give something that is of the value of 2 or 3 cents with a package of tobacco, it is, as Judge Putnam said in that case in Massachusetts which I have cited, a method by which the small customer gets a discount, whether that discount is payable in cash or in property.

Mr. COCKRAN. There is no doubt about that, but the question I wanted to direct your attention to, if it is within the line of your argument, was the suggestion of Mr. Yerkes that this discount was made by those men, varying in different places. Thus, a discount of 3 cents might be made in Louisville, where there was active competition, and probably a discount of 1 cent or no discount at all in Detroit, where there did not happen to be any competition.

Mr. JONES. Is it not perfectly within the right of the giver of an article to determine the amount of the gift? Then if he determines that in Louisville he will give 3 cents, he may determine that in Detroit he will only give one.

Mr. COCKRAN. Your contention is that that is legitimate?

Mr. JONES. Perfectly legitimate, and further on that point is the case of the Great Mogul Steamboat Company, which is world known, where a company went into the business of transporting merchandise from Australia to London, and that case set at rest forever the right of any manufacturer or transportation company—that is, outside of one affecting the public interest—to sell or give away its goods in competition with its competitor, and give them away for nothing if it so chooses; it is absolutely immaterial whether I sell my manufactured goods or give them away, whether I am paid for them or not. What is the criterion of such a case? It is, Is the public benefited? Does the public get more for its money than it otherwise would? The individual manufacturer has no concern in such a question. It is, Is the public getting more for its money than it otherwise would? If we distribute 1,000,000 packages of tobacco, which cost us 3 cents, for 2 cents, and the other man can not produce them for less than 5, let him go into the grocery business or some other business; those are the principles of fair competition.

Mr. COCKRAN. It does not seem to me that you catch the point of my question exactly. Say, for instance, a man makes one rate on his goods in Cincinnati, where there is no competition, and makes another rate in Detroit, where there is, and under this method he disguises that he is making a special rate in one case for the purpose of extinguishing the competition; that is the point.

Mr. JONES. I do not know that any facts have been produced to prove that. As to disguise, the coupon itself tells you what you are getting.

Mr. COCKRAN. Mr. Yerkes told us here yesterday that, for instance, in some places there would be a coupon entitling a party to 3 cents inclosed in the package, and precisely the same article would be sold in another place where the coupon only called for 1 cent, the difference being that in one place there was competition and in the other none. Now, what I want to get at is whether you contend

that that method of rebate, disguised or concealed under this system of coupon, is a legitimate competition in trade, assuming the fact to be as Mr. Yerkes stated it?

Mr. JONES. I can not see the disguise. You find that package of tobacco in Cincinnati, and you get your coupon; you open it and you see that the coupon entitles you to 3 cents. You know what you get. You go back and buy another, and buy half a dozen; you think it will not last very long, so you go back and buy some more. In another town at the same time they are selling at regular prices.

Mr. COCKRAN. That is it, in one case, you see, a regular rate would have to be published in a circular in the orderly method of reaching the market; in this case there would not be any necessity to disclose the fact that there were two rates in different towns.

Mr. JONES. It seems to me a detail of business competition. If I have a store in St. Paul and another in Chicago, I do not have to sell my goods in Chicago at the same price as I do in St. Paul. The people in Chicago know exactly what they are getting, and so do the people in St. Paul. If a man comes from St. Paul and finds that the goods are selling cheaper in Chicago than they are in St. Paul, he loads up in Chicago and goes back.

To return to the main thread of the argument, I say that this business of giving coupons has been declared to be a perfectly legitimate method of advertising by the supreme courts of more States in the Union than almost any other line of business that has ever been litigated, possibly excepting the insurance company business, and I will just refer very briefly to the decisions on that point. The laws affecting coupons and similar devices may properly be divided into four classes: Prohibition of gifts through the medium of coupons and similar devices; licensing of trading-stamp companies or of merchants who give trading stamps; taxation of trading-stamp companies or of merchants who give trading stamps, and regulation of trading-stamp companies. There is no difference between trading stamps and coupons. Sometimes the courts call them trading stamps and sometimes coupons, and sometimes in the same decision they call them both. They are trading coupons or trading stamps or coupons, but they decided again and again that there is no distinction between the two kinds in Alabama, Colorado, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. The courts have decided that the legislature of the State has no right to impose a prohibitive or destructive tax or pass a statute prohibiting, directly or indirectly, the giving of a coupon by a merchant, and I will leave the decisions with the committee, and if they do not find what I say to be true, I would like to hear from them on the subject.

There has been mention made here that the trading stamp or coupon business was in the nature of a lottery, and it was suggested by Mr. Yerkes that these cigarette tickets were something in the nature of a chance; that they originally sprang from something in the nature of a chance. It has been decided in Alabama, Arkansas, Colorado, Maryland, Michigan, North Carolina, Pennsylvania, and Virginia that the coupon business is nothing in the nature of a lottery and it is not subject to the police power of the State. Licenses upon merchants, licenses in the nature of license taxes upon merchants who gave coupons and trading stamps with their business has

been decided to be unconstitutional in Alabama, Arkansas, California, North Carolina, and the State of Washington, and in several others. In Georgia, Mississippi, and Virginia it has been decided that the company which furnished the goods to redeem these coupons could not be put out of existence by any such measure.

I will say without fear of contradiction that, except in one or two minor overruled and unimportant decisions, the current of legal authority on this question is that the State has no power to destroy the giving of a coupon by a merchant in connection with the sale of merchandise, and I come now to the principal point of my argument. If the State now has no power to destroy, under the police power or under the taxing power, the giving of a coupon by a merchant, has it ever had the power? If it ever had the power and has given it away, it would make some suggestion in one of these cases that it is sorry that it has not the power, but it gave it to the United States some time in the last century, and therefore they have to go to the United States Government if they want to prohibit this business. But there is no suggestion in the whole current of legal thought that the State would not have the power if this business fell within its police power, but on the contrary the decisions are replete with references to the view that the business does not fall within the police power, because it does not affect the safety, the health, or the morals of the community, and the United States decisions are to the effect that the police power of the State goes to the health, safety, and morals of the community, and goes no further.

In Massachusetts a case was recently decided where the legislature of Massachusetts imposed a tax on every merchant who gave coupons with his business, and in that case the court referred to a couple of prior decisions in Massachusetts, one of them by Judge Holmes, now on the Supreme Court bench, and said:

Such deliveries have generally been considered permissible in connection with the sale of articles, in the exercise of a common right; and many cases have been decided which invalidate statutes or ordinances intended to prevent such deliveries.

And then it goes into a long list of these decisions, which I will not read. It then goes on to say:

The only difference referred to is the giving or delivering as a part of the sale or in connection with it, as a stamp, or other similar device, which represents an additional right of property. Because this is entirely legitimate (see cases above cited) the attempt to tax it, as a peculiar kind of sale, is "a discrimination founded upon an immaterial fact," which renders a statute invalid.

Here is the crux of the situation with reference to the constitutional point:

Taking the acts referred to in the broad terms of the description in the statute, they are not dependent for their legality upon the legislative will, nor do they call for legislative regulation. They are performed in the exercise of a natural right, and are not in any sense rights or privileges conferred by law.

That was Chief Justice Knowlton who wrote the opinion in that case. The same court had previously decided, in reference to a tax upon a certain kind of partnership:

If this tax can be upheld it seems to us that the necessary result will be that the legislature has the power to select any business, occupation, or calling carried on, or any natural right enjoyed, under the protection of our laws, and impose upon it at its will a special tax or excise. This would be extending the meaning of the word

"commodities" beyond any reasonable limits. Its effect would be to break down the limits which the Constitution intended to impose upon the power of the legislature for the purpose of securing the end that all sums necessary for the defense and support of the Government should, as far as practicable, be raised by the equal taxation of the people.

I claim that the giving of coupons by a merchant is a free gift; it is in the form of a discount; it is in the nature of an advertisement, and it is a natural right which does not rest upon the behest of any legislature for its operation, and it is not dependent upon the legislative will.

If that is true, and the decisions seem to uphold that proposition, how is it that Congress can impose upon that natural right a tax which drives it out of existence? Can it impose it because it is under the police power? The decision of all the States I have referred to show that it can not be prohibited under the police power. Can it do it, then, under the taxing power? Congress, it is said, has no limits to the taxing power. I say, gentlemen, that there is a limit placed upon Congress, and it was said by Mr. Yerkes yesterday that there is only one proper limit placed upon the taxing power of Congress, but I say that there is another limit placed on the taxing power, and that is that it shall not be used for the purpose of prohibiting a natural right.

Mr. COCKRAN. What about the oleomargarine case?

Mr. JONES. I am just about to take that up. In the oleomargarine case, in which this whole proposition was determined (*McCray v. United States*, 195 U. S., 27), there was a tax placed upon the sale of oleomargarine, which was intended to be prohibitive. It was ably argued in opposition to that statute that it prohibited what was a perfectly lawful business, but if you gentlemen will read what was said in the light of what I have said in regard to a natural right, where Massachusetts said they could not destroy a natural right by taxation, if you will read this decision you will see that the court very carefully avoids deciding that it has the power or that the Congress has the power to destroy a natural right. The proposition in that case was that although as a general rule a tax of the nature of the one in question would be within the power of Congress, in this case the tax should not be within the power of Congress; it is prohibitive, and prohibitive of what they claim was a perfectly valid business. The court said:

Let us concede, for the sake of argument only, the premise of fact upon which the proposition is based. Moreover, concede, for the sake of argument only, that even although a particular exertion of power by Congress was not restrained by any express limitation of the Constitution, if by the perverted exercise of such power so great an abuse was manifested as to destroy fundamental rights which no free government could consistently violate, that it would be the duty of the judiciary to hold such acts to be void upon the assumption that the Constitution by necessary implication forbade them.

Such concession, however, is not controlling in this case. This follows when the nature of oleomargarine, artificially colored to look like butter, is recalled.

When you read the decision you will find that they refer to the various laws of the various States, and they held that the States had the power to prohibit the manufacture of oleomargarine. The States have that power, and where does it lie? It lies within the police power, within the power to protect the health of the community. We have here, then, a case where they were dealing with a subject which fell exactly within the police power of the States, and which was not a natural right, and which was dependent for its existence upon the legislative will, because the legislative will could prohibit it.

But, as I have shown you, the legislative will can not prohibit the giving away of a coupon, and therefore the giving away of a coupon does not fall within the police power of the State, and that has been decided so often that it is foolish to mention it, as I read to you the list of supreme courts that have decided the proposition. The giving away of a coupon does not fall within the police power of a State; it is not within the class of oleomargarine, and it is the one exception which the court in the oleomargarine case has made.

MR. UNDERWOOD. Did not that case turn on the proposition whether that tax was levied for revenue or not?

MR. JONES. The court did say whether or not that tax was levied for revenue.

MR. UNDERWOOD. And that ended that particular case?

MR. JONES. No; they left themselves open here, because, they said, conceding that this tax was levied for the purpose of raising revenue—but that is a perversion of the conceded power of Congress—and that it will destroy the business which it affects, conceding all that, it is dealing with a subject-matter which falls within the police power and therefore it can be destroyed. But we are not discussing a question where we are dealing with fundamental rights which any government could consistently violate.

MR. UNDERWOOD. But have they not repeatedly held that they could not inquire into the question as to whether a tax was levied for revenue or not; that it was a question for this committee and for Congress to determine, but not the court, the purposes of levying a tax?

MR. JONES. They do not close the door on their power; if you read that case carefully you will see that they leave the door open, or leave a crack open.

MR. UNDERWOOD. They never opened the door, though.

MR. JONES. They have opened the door.

MR. UNDERWOOD. Can you cite any decision where they have declared an act unconstitutional because it is using the taxing power for some other purpose than for the purposes of revenue?

MR. JONES. No; I can not right offhand. Up to the present time Congress has not ventured to destroy a fundamental right such as they call this one here.

MR. UNDERWOOD. The 10 per cent tax on State banks was a tax levied for destruction.

MR. JONES. No; that was a tax levied upon a franchise, not upon a natural right; that was a tax upon a right which was conferred by a legislature; it is not a natural right to deal in the banking business, and that has been decided, and I can cite the cases in Massachusetts to that effect. This very case that I cited from Massachusetts was founded upon a statute where they imposed a tax upon the State banks, and I have half a dozen cases on that very point.

MR. COCKRAN. Do you contend that the power of Congress to exercise the taxing power is different when it affects some power conferred by a State?

MR. JONES. Yes.

MR. COCKRAN. How does it affect the power of Congress to levy taxes?

MR. JONES. I say where you can find a natural right not subject to legislative will.

Mr. UNDERWOOD. I would like to have you read that quotation from the McCray case again:

Mr. JONES (reading):

Let us concede, for the sake of argument only, the premise of fact upon which the proposition is based. Moreover, concede for the sake of argument only that even although a particular exertion of power by Congress was not restrained by an express limitation of the Constitution, if by the perverted exercise of such power so great an abuse was manifested as to destroy fundamental rights which no free government could consistently violate, that it would be the duty of the judiciary to hold such acts to be void upon the assumption that the Constitution by necessary implication forbade them.

Such concession, however, is not controlling in this case. This follows when the nature of oleomargarine, artificially colored to look like butter, is recalled.

So, they are dealing there with a subject-matter that the States, in the exercise of their police power, may prohibit, and they say it does not violate any of the fundamental rights which are secured by the Constitution, and I know of no case where what is conceded to be a natural right, not dependent upon the legislative will, has been, by taxation or any other power, by the States or by Congress, driven out of existence. I ask you to cite me a case of that kind, where a natural right has been prohibited by the taxing power of Congress.

Mr. DALZELL. I would like to ask you a question. You contend that these coupons can not be excluded under the taxing power because that is the exercise of a police power under the guise of taxation; furthermore, that they can not be excluded because they do not fall within the police power; they are a fundamental right. Do you go further and say that Congress can not exclude them under its power to regulate packages of tobacco?

Mr. JONES. No; I am perfectly free to admit that Congress can determine the size of the package, the number of cigarettes, the ounces in the package, and what it shall contain and how it shall be packed, whether it shall contain absolutely nothing; it can do that, because within its power to raise revenue it has the right to determine exactly how much of this tobacco shall be contained in the package, so as to see how large the tobacco business is.

Mr. DALZELL. In other words, outside of the taxing power and outside of the police power, it is still within the power of Congress to prohibit these coupons?

Mr. JONES. No; Congress has the power to require anything in connection with tobacco, but these coupons have nothing to do with tobacco, because, as you very well know, this bill is so broad that when you go in and buy a package of tobacco which is packed in any way which Congress may determine, and it is handed to you and you pay them ten cents, he puts his hand in another drawer and hands you a coupon, and this bill covers that. Congress can determine the size of that package and what it shall contain, but if you prohibit the giving of a coupon in connection with the package, that is something you have no right to do.

The CHAIRMAN. Congress can prohibit the packing of a coupon in the package?

Mr. JONES. Congress can prohibit the packing of a coupon in the package; Congress did that but found that they adopted other means of making their gift—that coupon was only representative of a gift—and they found other means of doing it, and the law was repealed

and since that time nobody has cared to put the law on the statute books again, so far as I know.

I want to read further in the McCray case, because, as I say, this is the gist of the situation:

Let us concede that if a case was presented where the abuse of the taxing power was so extreme as to be beyond the principles which we have previously stated, and where it was plain to the judicial mind that the power had been called into play, not for revenue, but solely for the purpose of destroying rights which could not be rightfully destroyed consistently with the principles of freedom and justice upon which the Constitution rests, that it would be the duty of the courts to say that such an arbitrary act was not merely an abuse of a delegated power, but was the exercise of an authority not conferred. This concession, however, like the one previously made, must be without influence upon the decision of this cause for the reasons previously stated; that is, that the manufacture of artificially colored oleomargarine may be prohibited by a free government without a violation of fundamental rights.

That is the reason why the oleomargarine decision was made, because it did not violate fundamental rights. If the States have never had the power to violate fundamental rights, they never could have conferred that power upon Congress, whether they conferred it by taxation or by police power or by any other power. If they never had it, and they never claimed to have it, and their decisions say they have not got it now, there is nothing to show that Congress have got it, because the United States is a government of delegated power, and I stand here upon the proposition that Congress can not, under the taxing power, destroy fundamental rights such as are referred to in the McCray case. That is why this law would be unconstitutional, and I say that that is the reason why the Supreme Court would probably determine that the law was unconstitutional, but that consideration does not affect you gentlemen.

MR. LONGWORTH. Let me ask you right here, then the amount of the tax, in your opinion, determines the constitutionality of the tax? Suppose this was a tax of 1 mill on each coupon, would you claim that that was unconstitutional?

MR. JONES. I would say, if it is prohibitive, that makes a different consideration. I say that if they determine to raise revenue by the imposition of a tax which is upon a natural right, the question is one of power; have they the power? I say they have not the power to either limit, regulate, or destroy a natural right.

MR. LONGWORTH. Then it does depend upon the amount of the tax, does it not?

MR. JONES. No; that would be, in my opinion, just as unconstitutional, if it is imposed upon a natural right, because they have no power to tax a natural right.

MR. COCKRAN. No power at all?

MR. JONES. No power. It is a question of power, where does Congress get its power? It got it from the original States, delegated power. The original States could not delegate more than they had; they had no right to tax a natural right or destroy it. They have repeatedly shown that this is a natural right, to give away one's property.

MR. COCKRAN. You say the States have not the right to tax a natural right?

MR. JONES. No.

MR. GAINES. You say they have not the right to tax a natural right. Have they not the right to regulate it by a tax under the pretext of a revenue?

Mr. JONES. I say that the State has not the power to regulate the operation of a natural right. It has any right which depends for its exercise upon the legislative will, as was said in Massachusetts or as is said in the McCray case, those fundamental rights, to violate which would be inconsistent with the Constitution. There are such fundamental rights.

Mr. GAINES. Are these fundamental rights property rights? Are there, then, some species of property which from their nature are exempt from taxation?

Mr. JONES. Is it a property right when I give you a gift? Is that a property right? I do not define that as a property right, the right to make a gift.

Mr. COCKRAN. It is a right to dispose of your property.

Mr. JONES. The right to dispose of your property is not a natural right, but the right to make a gift is a natural right. The method by which I dispose of my property, my business, for sale for cash or otherwise, may not be a natural right; that is dependent upon the legislative will; but the fundamental right that I have to make a gift of my property is not dependent upon the legislative will, and it was never conceded to the United States Government to destroy such a right as that, either by taxation or otherwise.

Mr. LONGWORTH. Then how would a law be constitutional which put a tax on a bank check?

Mr. JONES. That is not a natural right; it has been repeatedly held that the right to carry on business under the law merchant is not a natural right, but is a right which depends entirely upon the legislature. The legislature can regulate your checks in all kinds of ways.

Mr. COCKRAN. Do you think it is a natural right to issue a promissory note?

Mr. JONES. No.

Mr. COCKRAN. You have no right to issue a promissory note?

Mr. JONES. You have a right to issue it, but that is a contract which the Government can regulate; that is dependent entirely upon the legislative will. You say, "Thirty days after date I promise to pay to so and so." You can issue that, but how can you collect without the law?

Mr. COCKRAN. That is not the question; but is it a natural right to issue a promissory note?

Mr. JONES. To issue it; yes.

Mr. COCKRAN. Would the legislature have a right to limit or destroy that?

Mr. JONES. But the transaction itself is one which depends for its validity upon the legislative will.

Mr. COCKRAN. Then it is not a natural right?

Mr. JONES. I will say that it is not a natural right; no.

Mr. COCKRAN. What would you define as a natural right?

Mr. JONES. There is the right to clothe yourself.

Mr. COCKRAN. Would not the legislature have a right to tax clothing?

Mr. JONES. Yes; to tax clothing, but not the right to tax the privilege of clothing yourself. It can not tax certain people because they wear brown hats or certain other people because they wear black clothes.

Mr. COCKRAN. But they do tax clothing?

Mr. JONES. Certainly; that is a commodity. But I say that any of these fundamental rights which are subject to the legislative will, which can be regulated by the legislature, are subject to taxation, rights which can be blotted out by the legislature, which are dependent upon the legislative will, but when you come to a right which is not so dependent, you can not tax it out of existence.

Mr. COCKRAN. Can you tax it at all?

Mr. JONES. No; you can not tax it at all.

Mr. GAINES. If I buy a cigar, you give me a coupon, and that coupon entitles me to property, does it not? Then could not they tax the coupon in my possession, even though they could not tax your right to issue it?

Mr. JONES. This is a tax upon the issuance and redemption of these coupons.

Mr. GAINES. They could not tax the issuance or redemption, but could they tax the coupon in my possession when I have received it; how about that?

Mr. JONES. They could tax a piece of paper which was in your possession; yes, I presume; that piece of paper is representative of property, and they could tax that. But these considerations as to the extent to which the McCray case goes and the limit which it itself sets upon the power of Congress, I say are not controlling with this committee. The question with this committee is not how far the Supreme Court's power goes in passing upon an act of Congress and the power of Congress in a matter of this kind, but it is a question whether it is proper and advisable to start out on a proposition of this kind. I will tell you why it is not.

Mr. LONGWORTH. I did not understand your answer to the question I put as to whether the tax of 1 mill on each coupon rather than a tax of 2 cents, as provided in this bill, would be, in your opinion, constitutional?

Mr. JONES. I say no, it would not be, because it is a tax upon a natural right, and the question that now comes before the committee, at all events, I say, is doubtful. In my opinion, it is not, in the rigid principles of jurisprudence, at all doubtful, but in the chances of getting a decision from the Supreme Court on one side or the other side of this case, I may say that it is doubtful whether the Supreme Court would declare this law unconstitutional. In my opinion, it ought to declare such a law as this unconstitutional, but this committee is not bound by what the power of the Supreme Court is to pass upon the power of Congress. This committee should look to the probable consequences of such a law as this. This law takes now only the coupons which are attached to tobacco. Why does it not take the coupons which are attached to coffee, the signatures which Arbuckle, one of the largest coffee manufacturers in the world, redeems on his packages of coffee? Why does it not take the coupons which are used in connection with the sale of baking powder, in connection with the sale of all other articles, and the number of them is legion. If it did so, would it not bring down upon the members of this committee a deluge of protests from the people who are engaged in those businesses? Where does this cry for this legislation spring from? It springs from those individuals who find that this method of giving away property, this method of advertising one's business, hurts them; the shoe pinches,

because these people can get away with their business, because the American Tobacco Company can do more business in districts where they say they are entitled to their fair share of business. No merchant is entitled to a fair share; he is entitled to as much business and as much money as he can get, and it makes no difference whether the American Tobacco Company owns 98 per cent or 2 per cent; it is the natural right.

Mr. RANDELL. Does this bill prohibit anything that would interfere with any of the activities of your company?

Mr. JONES. Most assuredly, we issue a coupon in connection with our tobacco just the same as the American Tobacco Company does.

Mr. RANDELL. Has the American Tobacco Company anything to do with the ownership or management of your company?

Mr. JONES. I do not think so. The president of our company is the treasurer, I believe, of the Independent Tobacco Manufacturers' Association, which is making such a howl about this bill; he is one of the principal officers of this association, which is supposed to be represented here in full numbers, and he himself is a tobacco manufacturer and issues coupons, and Mr. Bloch, here, an independent manufacturer, the largest competitor of the trust, is opposed to this measure on the same grounds, that it will destroy the business.

Mr. RANDELL. You feel that this 98 per cent controlled by the trust does not interfere with your company?

Mr. JONES. Not in the slightest.

Mr. RANDELL. You are more afraid of this bill, then, than you are of their competition?

Mr. JONES. Most assuredly. We can stand on our own feet. These little tokens, as they are called—where they can not use any other name they bring in the word "token"—are extremely simple, they must be very simple—little tin tags of almost no size. How are you going to get a revenue stamp attached to a little hatchet that is only about one-tenth of an inch or one-quarter of an inch long? How are you going to be sure that all those things, when they pass from hand to hand, all those which are now outstanding—and there are millions of them outstanding—I repeat, how are you going to be sure that the stamp will stay on those tags? Every one of those, when presented for redemption, must have a stamp upon it, otherwise it is a misdemeanor. Are you going to compel the manufacturers to increase the size of those coupons so that they can put a stamp of the proper size, fixed by the Government, upon that.

Another thing that has not been brought out in this argument is this: I, as a manufacturer of tobacco, have to provide my market; I have to build up my own market; the retailers do not build up their market. How much do you think that card will cost [indicating sign card]? That will cost you, in lots of 10,000, probably a quarter of a cent apiece. For a certain number of these coupons they will cost, say, 2 per cent of the cost of these cards, and the balance of the cost will go into the premium, so that it is a cheaper method of advertising these different brands of goods than is the billboard and other methods of advertising, and the field of advertising finally is opened to every one of these manufacturers. Let them go into the same method of advertising that we are in, or let them adopt some better method of advertising. Do not let them, as Judge Peckham, when

he was chief justice of the court of appeals of New York, said in regard to such legislation as this:

It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited, or destroyed by the legislation under consideration. It is evidently of that kind which is meant to protect some class in the community against the fair, free, and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition and therefore flying to the legislature to secure some enactment which shall operate favorably to them or unfavorably to their competitors in the commercial, agricultural, manufacturing, or producing fields.

That is Judge Peckham's language when he sat on the court of appeals passing upon the law which upheld the coupon business, and I have no doubt the court would see its way clear to use similar language if it was called upon to pass on this question.

**STATEMENT OF MR. HENRY M. RUSSELL, OF WHEELING, W. VA.,
REPRESENTING THE BLOCH BROTHERS' TOBACCO COMPANY.**

MR. RUSSELL. Mr. Chairman and gentlemen, I represent, as has been suggested to you, the Bloch Brothers' Tobacco Company. They manufacture and dispose of what is known as "Mail Pouch" tobacco. You may have seen advertisements of "Mail Pouch" tobacco, and if you have ever traveled through any part of the country you have seen it as you went past on the train. They are not connected in any way with trusts or combinations or things of that sort of any kind. The company is a corporation which has been doing business for quite a number of years, and has been, during a great many of those years, using coupons in the ordinary way for the purpose of advertising the business, for the purpose of accommodating and encouraging customers, and for the purpose of increasing the business in that manner. With regard to the constitutional question, my time is very limited, and at any rate I would not care to go into that question at present. Mr. Yerkes showed you gentlemen yesterday that he thought the constitutional question was there and needed something from him; Mr. Jones has gone into it pretty fully this morning, so that I shall not undertake to discuss or talk about the constitutional features. But apart from that, even assuming that Congress has the constitutional power to enact a bill like this, why on earth should Congress do it? What is the reason for it? Are you here to assist competitors? Are you here for the purpose of passing bills that will help people on one side and hurt people on the other side of a competitive line of business? That really is the whole purpose of this bill. There is nothing else belonging to it.

Take the coupon itself, why should you prohibit it, or why should you interfere with it by putting a tax upon it? It is not a gambling institution; there is not any lottery about it. The man who buys a package of tobacco that has a coupon attached to it simply gets the coupon in addition to the tobacco, or pays that much less for that part represented by the coupon than he would pay if the coupon was not there. It is simply to the purchaser a slight difference in the price of the package; he is not gambling; he gets for the price that he pays for the package the tobacco, and he also gets the coupon, and that coupon represents a portion of an article which he can get by presenting certain coupons to the manufacturer. The manufacturer has a list of various articles and these articles are of various values and char-

acters. So many coupons will procure a certain article, so many others a certain different article, and so on; so that what the purchaser does by getting his package and his coupon is to pay that much less than the price that he pays, which is represented by the value of the coupon, of what article he will get upon presenting the coupon. There is nothing in the way of a gambling nature; there is nothing immoral, nothing wrong in any way, and nothing which would induce, or should induce, Congress to pass a bill the effect of which would be practically to prohibit the use of the coupon.

It is really a method of advertising and advertising in such a way as to induce the public to purchase this quality or quantity of tobacco. The manufacturer of this tobacco advertises by the coupon and also advertises in other ways, and there is no more fault, no more blame to be attached to the advertising by the method of the coupon than there would be by the advertising by bill posting or other methods that are generally used. The purpose of the bill is what? Ordinarily, in my experience, and when I had thought over these things, when the Government undertakes to impose a tax upon a thing of any kind it is for the purpose of getting revenue for the Government. If the Government needs revenue for its various uses and purposes, it taxes and gets the revenue by reason of the taxes. Is that the purpose of this bill?

Mr. UNDERWOOD. It seems to me that it is conceded that the purpose of this bill is to prevent, or supposed to prevent, the trust from driving the smaller competitors out of business, who are in competition with the trust. You are an independent manufacturer?

Mr. RUSSELL. Altogether.

Mr. UNDERWOOD. The policy of Congress for a number of years has been against the trusts; we have not passed a law directly aimed at trusts, but we have legislated against them. This legislation is undoubtedly intended to be directed against the trust, the building up of a monopoly along that line. What have you to say as to whether this does build up a monopoly, and as to whether such legislation would protect these independent manufacturers?

Mr. RUSSELL. It does not build up a monopoly. It is manifest that the use of these coupons does not build up a monopoly, because these coupons not only are used by the trusts, but also by others who are not in any way affected or connected with the trusts, for the company I represent has not anything at all to do with the trust; it uses these coupons. Any other that would choose to do so could come in and use coupons in like manner, and the purpose of the friends of this bill is to injure and affect the trade and business not only of the trusts, if they are using coupons, but of others who are using coupons, and to assist and to benefit that portion of the tobacco business who are not at the present time using coupons, although they could do so if they wanted to.

Mr. COCKRAN. You were here when Mr. Yerkes spoke yesterday?

Mr. RUSSELL. Yes, sir.

Mr. COCKRAN. What do you think of that suggestion of his along the line of what Mr. Underwood has been suggesting to you, that a company doing business all over the country could utilize this system of coupons by giving special rates in localities where competition exists and different rates where they were free from competition and disguise that fact from the general public?

Mr. RUSSELL. I only know what the company I represent does in that connection, and there is not anything of that sort practicable in the way in which it does its business.

Mr. COCKRAN. Would that condition which Mr. Yerkes describes apply?

Mr. RUSSELL. I would not think so. I am not sufficiently familiar with the methods that the company uses to be able to speak and answer that question definitely, but I know that the company I represent has its coupons and its packages in such condition and such state that the same advantage is given to a person at every point in the country; there is no difference and can not be in amount.

Mr. COCKRAN. I hold here a package of "Checkerberry" snuff. In the top of that is a coupon entitling the holder to 2 cents in cash. If a coupon were placed in the top entitling the holder to 4 cents and that were sold in one locality and this were sold in another it would have the effect of creating special conditions in that locality and deceiving the general public?

Mr. RUSSELL. Yes, sir.

Mr. BONYNGE. How do they conceal it?

Mr. COCKRAN. It is not mentioned; no person would know that except those who bought it. For instance, this package is circulated, we will say, in Louisville with a 2-cent coupon; it is sold at one rate in Louisville; but they circulate that with a 4-cent coupon in Detroit, and it is sold there with that coupon inside. That difference would not be disclosed in the circular.

Mr. BONYNGE. One of the circulars produced here this morning had on it "double coupon," while the other had on it "single coupon," indicating that they were giving double the amount in one place.

Mr. COCKRAN. What I wanted to direct the gentleman's attention to is whether that would not have precisely the effect which I have described.

Mr. RUSSELL. Our people would have nothing to do with any such transaction as that.

Mr. COCKRAN. They would not countenance it?

Mr. RUSSELL. No, sir.

Mr. CLARK. The whole sum and substance of it is that the bigger the concern the easier it is for them to make money out of these coupons, and the reason you are for it is that your concern is one of the biggest independent concerns in America.

Mr. RUSSELL. The reason I am for it is that this bill would affect seriously and hurt the concern I represent.

Mr. CLARK. That is because it is a big concern.

Mr. RUSSELL. It did not begin by being a big concern; it has gradually grown to be a big concern.

Mr. CLARK. I know all about it.

Mr. RUSSELL. But it began on very moderate lines, and yet used coupons when it was not a very big concern, and a moderate-sized concern can do the same thing. There is no reason why a big concern could use them and the smaller concern not.

Mr. CLARK. Here is the reason of that: You take a big concern; it sells an immense quantity of tobacco and it becomes an object of profit for somebody to hunt up and collect these coupons, but if it is a little concern and its trade is small then it is not profitable for anybody to hunt up the coupons.

Mr. RUSSELL. If the articles are there ready to be given when the coupons are presented, it would pay the man to hunt up the coupons, even if the concern had only one article.

Mr. POU. Can you tell us the number of presents given away by your company by reason of these coupons?

Mr. RUSSELL. No, sir; I could not; we have never gone into those figures.

Mr. POU. If this law were passed and the coupons were driven out of existence, what effect would that have upon the public; would that put down the price of tobacco or put it up?

Mr. RUSSELL. I do not see that you could answer that question because that would depend altogether upon the kind of competition that you would find in various parts of the country and among various manufacturers and sellers.

Mr. RANDELL. Is anybody here representing the 98 per cent, the trust, the American Tobacco Company, or is this fight between the 2 per cent, the independents? Is anybody here representing the American Tobacco Company?

Mr. RUSSELL. I do not know of anybody.

Mr. BONYNGE. If the coupons were destroyed altogether, could you not accomplish the same purpose by reducing the price of tobacco?

Mr. RUSSELL. You could not accomplish the same purpose in the advertising line, in the inducement that you offer people to buy your tobacco.

Mr. BONYNGE. And the further inducement of having them come back to the same seller.

Mr. RUSSELL. Yes, and get the coupons. The company would lose very seriously in the advertising line.

Whereupon the hearing was closed.

APPENDIX.

MEMORANDUM SUBMITTED BY MR. BENJAMIN PEARSON.

[See page 165.]

To the honorable Committee on Ways and Means:

"CHECKERBERRY SNUFF."

The following table illustrates the iniquities of the "Coupon" system:

"Checkerberry snuff" is put up in 1-ounce decorated tin cans, which retail for 5 cents each, of which there are 28 packages in a carton, sold as 1½ pounds, which gives 4 ounces free snuff.

Each 1-ounce package contains a 2-cent cash tag or "coupon." The following table gives the cost of this 28 ounces, without the cost of the snuff contained in the packages:

28 1-ounce tin cans (decorated) at \$6 per M	\$0. 168
Should cost about 6 cents per pound to flavor if pure oil of wintergreen or oil of sweet birch is used	. 105
Internal-revenue stamps, at 6 cents per pound	. 105
Cartons, packing cases, printing, etc., at 2 cents per pound	.0375
Freight (average) 1 cent per pound	.0175
28 cash "coupons," at 2 cents each	. 56
Total cost without snuff	. 993

Jobber sells this 28-ounce package for.....	\$0.84	
Manufacturer sells same 28 ounces to jobber at	.84	
Less 10 per cent.....	.084	
	.756	
Less 2 per cent, ten days.....	.015	
		.741
Nets manufacturer on wrong side of ledger.....		.252

Or in other words, at a net loss of 25.2 cents, not including cost of snuff, cost of manufacture, or any other cost, including selling.

It may be said that only about 60 per cent of tags or "coupons" are redeemed, but common sense will tell anyone that a cash coupon for 2 cents is no more likely to be thrown away than any other kind of money, particularly when these coupons are redeemable at any store selling this snuff at retail.

Respectfully submitted.

BYFIELD SNUFF COMPANY,
BENJAMIN PEARSON, *President*.

BYFIELD, MASS., *March 8, 1908.*

ADDITIONAL STATEMENT SUBMITTED BY MR. JOHN HALL JONES.

[For Mr. Jones's other statement see pages 168-183.]

The following States have, through their supreme courts, Federal courts, or minor courts, declared that the giving of coupons in connection with the sale of goods, can not be prohibited directly or indirectly, whether the means used is taxation, license, or regulation, according as the facts in each case were respectively presented: Alabama, Massachusetts, Rhode Island, Vermont, Maryland, North Carolina, Mississippi, Washington, Georgia, New York, New Hampshire, Virginia, California, Nebraska, Arkansas, and Oregon.

Now, many of these decisions are based on the fourteenth amendment to the United States Constitution, securing the liberty of the citizen to engage in a lawful business against legislative interference, and protecting his natural and constitutional rights.

Now, this committee is asked to use the power of Congress by taxation to destroy what the States have said can not be lawfully destroyed—that is, to do indirectly what the fourteenth amendment says must not be done—thus nullifying the force of the decisions of the courts of last resort of the several States that have passed upon the subject.

ADDITIONAL STATEMENT SUBMITTED BY HON. JOHN W. YERKES.

[See page 161.]

APRIL 6, 1908.

MR. W. K. PAYNE,
*Clerk Ways and Means Committee,
House of Representatives.*

MY DEAR MR. PAYNE: In an argument made by me last Thursday before the Ways and Means Committee, and referred to by you over the phone this morning, I noted the fact that certain independent tobacco manufacturers who, at the hearings in 1903-4 of the bill H. R. 6, introduced by Representative Tawney, opposed the passage of that bill which prohibited the use of coupons, etc., in statutory packages of tobacco, had since that date sold their plants to the American Tobacco Company, or its allied companies.

By referring to pages 61 to 65, inclusive, of the hearings before your committee December 17, 1903, and January 15, 1904, you will find the names of the independent tobacco manufacturers who signed the memorial opposing the passage of the bill. Of those independents, the following have sold their plants to the American Tobacco Company, or the "trust," as appears by the petition filed by the United States of America against the American Tobacco Company and others, in New York, to wit: Lupfert Scales Company, the Nall and Williams Tobacco Company, Spencer Bros.,

the F. R. Penn Tobacco Company, and the Bland Tobacco Company. There are possibly others, but these are the only ones that I can positively make a statement concerning from the records.

Very truly, yours,

JOHN W. YERKES.

NOTE.—This list of names referred to in the above letter of Mr. Yerkes is as follows: The Bloch Brothers Tobacco Company, by Samuel S. Bloch, president; R. P. Richardson, jr., & Co., Incorporated, by R. P. Richardson, jr., president; Brown & Williamson, Winston-Salem, N. C., by Geo. T. Brown; Bailey Brothers, Winston-Salem; Lüpfert Scales Company; The Whitaker-Harvey Company, by T. S. Rucker, secretary and treasurer; Taylor Brothers, Winston, N. C.; F. M. Bohannon; Universal Tobacco Company, by V. D. Paul, vice-president and secretary, New York, N. Y.; The F. R. Penn Tobacco Company, by F. R. Penn, president, Reidsville, N. C.; Commonwealth Tobacco Company, by R. J. Snead, vice-president, Richmond, Va.; The Pinkerton Tobacco Company, Jno. W. Pinkerton, president, Zanesville, Ohio; H. Motley Company, Reidsville, N. C.; C. M. Benninghaus, Baltimore, Md.; Nall & Williams Tobacco Company, per Geo. D. Bow, Louisville, Ky.; Spencer Brothers, Martinsville, Va.; M. D. Bailey, Winston-Salem, N. C.; H. N. Martin Company, Louisville, Ky.; R. P. Richardson, Sr., & Co., Reidsville, N. C.; Chas. Gross & Co., Philadelphia, Pa.; Bland Tobacco Company, by R. P. Hamilton, secretary and treasurer, Petersburg, Va.; Berry-Suhling Tobacco Company, by T. D. Berry, secretary, Bedford City, Va.; Hancock Brothers & Co., Lynchburg, Va.

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PAYMENT OF DUTIES BY CHECKS

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

ON

H. C. RES. 15

APRIL 8, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS,

HOUSE OF REPRESENTATIVES.

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EBENEZER J. HILL.
HENRY S. BOUTELL.
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NICHOLAS LONGWORTH.
CHAMP CLARK.
WILLIAM BOURKE COCKRAN.
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D. L. D. GRANGER.
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WILLIAM K. PAYNE, *Clerk*

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LIKENED TO JACKSON ACT.

Correspondent Sees in Postal Savings Bill Danger of Currency Panic.

Editor Post: The operation of the postal savings bill, if enacted, may be as surprising as the effect of depositing the surplus revenues with the States in Jackson's administration. The act of June 23, 1836, to regulate the deposits of the public money required the surplus in the Treasury above \$5,000,000 on January 1, 1837, to be deposited with the several States in four installments, and the Secretary undertook to deposit with them one-quarter part of about \$37,000,000 on January 1, April 1, July 1, and October 1, 1837.

The result was a panic in May, 1837, before the third installment was deposited. An extra session of Congress was called. And before the time for depositing the fourth installment, the Treasury, being without funds that were available, was authorized to borrow in order to pay the current expenses of the government. The money deposited with the States—\$28,101,644—was never returned.

What the country needs is the passage of the Crow bill, which would inspire confidence at New York, Chicago, and St. Louis, and in every bank throughout the Union, that adequate supplies of currency could be obtained in an emergency. The enactment of this bill, introduced by Representative Charles A. Crow, of Missouri, would make the Vreeland-Aldrich emergency currency act of 1908 absolutely effective, and not only give relief in an emergency to the 108 banks in the 16 counties of his district, but also enable St. Louis, where 98 of those banks have correspondents, to supply currency to the banks of all the other districts in Missouri and of the Southwest generally. Under its simple provisions Chicago and New York also could supply all banks desiring currency from them.

No senator or representative who understood its provisions would object to its passage. It was designed to be, and is, unobjectionable. It requires no appropriation, nothing but the exercise of good sense.

Would it not be better for Congress to pass this measure before adjournment than possibly have an extra session this year or next?

JAMES C. HALLOCK.

June 20, 1910.

PAYMENT OF DUTIES BY CHECKS.

THE COMMITTEE ON WAYS AND MEANS,
Wednesday, April 8, 1908.

The committee met at 10.30 a. m. with Hon. S. E. Payne in the chair.

Present: The chairman and Messrs. Dalzell, Hill, Boutell, Needham, Calderhead, Gaines, Bonyne, Longworth, Clark, Cockran, Underwood, Granger, and Randall.

RESOLUTION UNDER CONSIDERATION.

[H. C. Res. No. 15, by Mr. Hill, of Connecticut.]

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that the Secretary of the Treasury should, in his discretion and under such regulations as he may prescribe, permit the receipt of certified checks of banks in payment of all public dues, the deposit of the same in depository banks, and the drawing of checks against such depository accounts by the disbursing officers in subtreasury cities as elsewhere.

STATEMENT OF MR. JAMES C. HALLOCK, OF BROOKLYN, N. Y.

[For additional statement filed by Mr. Hallock, see pp. 202-212.]

Mr. HALLOCK. A year ago, Mr. Chairman and gentlemen of the committee, the Baltimore clearing house made these recommendations to the Secretary of the Treasury:

SIR: Since the deposit of customs receipts in depository banks is now authorized under the law of March 4, 1907, known as the Aldrich Act, we, the undersigned banks of Baltimore, Md., suggest and recommend:

1. The employment of certified checks drawn on city banks by importers in payment of customs duties.
2. The deposit of such checks in depository banks here by the collector of customs to the credit of the Treasurer of the United States.
3. The drawing of checks on such deposits by the Treasurer or Assistant Treasurer of the United States in payment of public dues.

These recommendations were made on the 4th of April, 1907, and the matter has been before the Secretary ever since.

The contention was that existing law permits the Secretary to do all that he is requested to do here, but the gentlemen in the Department, who have had no experience with business conducted in this way, contended that there were legal objections, and those have been made. The matter is by no means a new one, and in a very few words I propose to take up the three points in these recommendations and to show how the Government has treated such subjects.

In the first place, take the matter of public deposits in banks. We can divide the history of such deposits from 1789, the beginning of the constitutional government, to date, into three distinct periods. In the first period it was a very simple operation, fully described

in the history of the national loans prepared by the Treasury Department, which shows that whereas the Treasury Department was established by the act of September 2, 1789, and under that act Alexander Hamilton was appointed Secretary of the Treasury on September 11. The Secretary found himself with the responsibility of supporting the Government when there was absolutely not a cent in the Treasury of the United States. There was, of course, no time to obtain it in the ordinary way of collecting revenue, and he at once proceeded in the usual commercial way of raising money by a loan from a bank, and borrowed \$20,000 from the Bank of New York on September 13, 1789, which is recorded in this history as "A loan agreed to be made by the Bank of New York to the Secretary of War, in pursuance of an appropriation made by an act of Congress of the 20th of August 1789." This act provides:

That a sum not exceeding \$20,000 arising from the duties on imports and tonnage shall be, and the same is hereby, appropriated to defraying the expenses of negotiating and treating with the Indian tribes.

Mr. DALZELL. What is the date of that?

Mr. HALLOCK. September 13, 1789, two days after the Secretary had been appointed, and while the appropriation was for Indian affairs, they used the money for the purpose of paying President Washington's salary and the salaries of the Senators and Representatives, and so on.

The CHAIRMAN. They had enough money for all purposes?

Mr. HALLOCK. This borrowing from the Bank of New York continued until they got some money in the proper way under their revenue system.

Mr. HILL. Was that money left on deposit in the bank where they borrowed it?

Mr. HALLOCK. The bank simply credited the Government with \$20,000, which was checked against, and they received the notes of the Bank of New York or made their drafts to the order of public creditors.

The CHAIRMAN. They actually had no treasury to deposit the money in?

Mr. HALLOCK. That was part of the treasury after the money was credited to them there.

The CHAIRMAN. There were no vaults or anything of that kind?

Mr. HALLOCK. No, sir.

Mr. HILL. How far did that period extend?

Mr. HALLOCK. It ran from 1789 to the passage of the subtreasury act on August 6, 1846.

Now, the way in which that deposit in the bank was treated is shown by the letters of Alexander Hamilton himself. He gave instructions to the collectors of customs that they were to receive the notes of the three banks then existing—the Bank of North America, in Philadelphia; the Bank of New York, and the Massachusetts Bank, in Boston. Then he made the following arrangement with the "Bank of Boston," as he called it, which I myself took from the original minutes of the Massachusetts Bank, for I went to Boston to obtain that information, and in which he expressed himself in this way:

The moneys deposited are to be carried to the credit of the Treasurer of the United States and are to be paid upon his drafts as they shall be presented; to cover which regular warrants shall from time to time issue.

This was the general characteristic of that period. There are other evidences.

For instance, a committee of the House in 1794 reported:

The Treasurer has never any public money in his possession or custody which is not, in fact, deposited in banks.

Then in 1801 another House committee reported that—

All moneys received by the Treasurer are deposited by him in the Bank of the United States and other banks.

I need not continue in that line, but it goes on up to the second period, which begins with the passage of the subtreasury act.

Now, the subtreasury act made it a felony to deposit a single dollar in a bank, an absolute felony, punishable by imprisonment of not less than six months nor more than ten years and a fine equal to the amount that was deposited, which was designated an embezzlement. That I call the second period, because nominally there were no deposits in banks. As a matter of fact, there were deposits in banks and the Secretary himself broke the law. He deposited as high as a million dollars, within a year after the passage of that act, in a bank to have it transferred from Boston to New Orleans, allowing considerable time for the transmission of the money. Under the law the Secretary could have been punished and fined a million dollars, several million dollars, before he got through.

MR. DALZELL. How long does that period run?

MR. HALLOCK. From August 6, 1846, to August 5, 1861. Nothing short of the civil war ever broke up that system. Then what occurred is very interesting. The subtreasury law was partially suspended by the act of August 5, 1861, passed, as you observe, only two weeks after the battle of Bull Run. But it was only suspended to the extent of permitting the Secretary of the Treasury to deposit in solvent specie-paying banks any moneys obtained on the loans then authorized. After that the Secretary had the power to use those deposits to any extent he pleased in payment of public dues. As a matter of fact, the deposits were not checked out. I can not blame the Secretary for it, perhaps, but the Department chose to demand specie from the banks of New York, Philadelphia, and Boston that had loaned the Government \$150,000,000, in three lots of \$50,000,000 each. The money was taken out of the banks of New York in bags of gold, and some of that gold was paid to the soldiers in the field as late as 1862, as I happened to learn. To have such public deposits in the banks of these three cities, then, was the first concession.

The second concession was the passage of the national currency act of February 25, 1863, which authorized the Secretary, in his discretion, to use as depositaries the national banking association formed under that act. That permitted him to deposit any public money, except receipts from customs. The next year (1864) that act was enlarged and made what is substantially the present section 5153 of the Revised Statutes, in regard to national banks as depositaries and financial agents of the Government. From that point we have no change until we get to 1901. Then that section was amended so as to permit the deposit of customs receipts in banks in Alaska, the Hawaiian Islands, and the other insular possessions of the United States. That was another concession. In 1907 all limitation was removed by the Aldrich Act, which permits the deposit of all customs receipts in banks. So, finally, we have this cycle running from 1789

to 1907, and we get back to the very point where Hamilton started, that is, to use these banks just as anybody uses them.

Now, that has only to do with the public deposits in banks. There were other peculiarities in regard, for instance, to the receipt of checks by collectors of customs and collectors of internal revenue. In the first period there was no restriction whatever, absolutely none. It is true, in 1840 the first subtreasury act was passed, in the last year of the Van Buren Administration, and repealed during an extra session in the first year of the following Administration, in August, 1841. I have not included that operation of the subtreasury act in this period because they still used banks, and here is an instructive account of how they tried to carry out that system at that time. This comes from a New York paper, the New York Exchange of September, 1840:

The operation of the subtreasury as at present carried out is a mere bank affair. The manner in which the business is done is this: The receiver holds his office in the Bank of America, and a person having a bond to pay deposits his money in the bank, draws a check, has it certified as good by the officer of the bank, and this is received for the bond.

That was in 1840. The subtreasurer also paid drafts on him in checks on the Bank of America, unless specie were demanded by the creditor. So you see they were still using banks in that period.

In the second period, when it was a felony to deposit money in banks, checks were not received by the collectors of internal revenue or customs; but in the third period they commenced to receive checks again. In 1863 the internal-revenue collectors commenced to receive checks, and they have received checks, with slight interruptions, from 1863 to date; but the receipt of checks for customs duties has not been permitted, except here and there in a desultory manner, until we get to the Aldrich Act of last year, and here we have a singular limitation again. While the checks are received by customs collectors—that is, in their discretion—all over the country outside of subtreasury cities, they are not received in subtreasury cities. For instance, in Baltimore no checks are received by the collector of customs, except in very few instances, which need not be considered. He requires the money to be paid. He puts that money in the subtreasury, and there it rests. In that manner of doing business the importer can not use his checks in payment, and it is necessary for him to obtain the money at his bank or elsewhere.

THE CHAIRMAN. The checks are received outside of subtreasury cities?

MR. HALLOCK. Yes, sir; in the discretion of the Secretary of the Treasury and at the risk of the collectors.

THE CHAIRMAN. I do not see how they can do that in view of the letter of the Treasurer of the United States which I have here. This resolution was submitted to him on the 19th of December, and on the 5th of March he wrote this letter to the Secretary of the Treasury:

TREASURY DEPARTMENT,
OFFICE OF TREASURER OF THE UNITED STATES,
Washington, March 5, 1908.

HON. GEORGE B. CORTELYOU,
Secretary of the Treasury.

SIR: I have the honor to submit my views on the concurrent resolution of December 19, 1907, providing for the receipt of certified checks of banks in payment of all public dues and the drawing of checks against the depository accounts by disbursing officers in subtreasury cities, as elsewhere, which was referred to me for an opinion.

The concurrent resolution is not law, and its provisions can not be complied with without absolute violation of the law, which provides that only gold and silver coin, coin certificates, Treasury notes, United States notes, or national-bank notes shall be accepted in payment of dues to the Government. See sections 3009 and 3473, Revised Statutes of the United States, copies of which are inclosed.

Section 3620, Revised Statutes, directs that every disbursing officer having any public money intrusted to him for disbursement shall deposit the same with the Treasurer of the United States or some one of the assistant treasurers of the United States. In places, however, where there is no treasurer or assistant treasurer the Secretary of the Treasury may specially authorize the deposit of such public money in any other public depository. Copy of section 3620, Revised Statutes, inclosed.

I also inclose the written opinion of the Solicitor of the Treasury to the effect that the concurrent resolution in question is not law and would operate no change in the present laws.

That would seem to be inconsistent with the statement that outside of subtreasury cities they have been receiving checks.

Mr. HILL. That would be no more effective in the case of customs than in the case of internal revenue. They have been receiving certified checks for internal revenue for years.

The CHAIRMAN. There seems to be this distinction: When the Government accepts a check in payment for customs duties they release the property and the property goes to the importer and enters into consumption. It is not so with all internal-revenue receipts. It may be with some of them. There may be or may not be a distinction, but I am only quoting the letter. I am not stating my views.

I also draw your attention to the fact that to accept checks from any bank would carry with it a great responsibility as to the reliability of payment, for a certified check when received by an official releases all other parties to the paper and the sole reliability of payment rests in the ability of the bank.

In times of financial unrest this would impose a serious responsibility upon the officials and perhaps might result in a grave loss. A check is only a promise to pay money, and the policy of the Treasury Department has always been to accept checks subject to collection, no credit being given until payment of the same has been received in money.

Furthermore, if officials were authorized to accept certified checks from any bank in payment of customs dues or internal revenue it would involve the requirement of a knowledge of the financial stability of hundreds of banks, which would be a most onerous burden unless a bureau of information were established.

It should also be considered that the Government has vigorously adhered to the practice and the law thereon that all deposits with banks should have satisfactory collateral. If only a certified check be received, then the bank whose certification is accepted for the check has Government funds in its possession and control, without any collateral being given to the Government. As in the cases of miscellaneous banks, no prior lien protects the Government. It would also be necessary that some arrangement be devised for the collection of certified checks, either through depository banks or through messenger service from the subtreasury. Our experience during the recent financial trouble in the difficulties encountered in collecting certified or other checks from the banks, not only by the Treasury, but by disbursing officers who kept their accounts in depository banks in cities where a subtreasury was not located, is still fresh in our memory, and this experience deeply impresses the fact that the Government should not be placed in a position where it would have difficulty in promptly collecting money due it in order to meet its expenditures.

Respectfully,

CHAS. H. TREAT,
Treasurer of the United States.

MEMORANDUM,

A concurrent resolution introduced in the House of Representatives December 19, 1907, declares:

"That it is the sense of Congress that the Secretary of the Treasury should, in his discretion and under such regulations as he may prescribe, permit the receipt of certified checks of banks in payment of all public dues, the deposit of the same in depository

banks, and the drawing of checks against such depositary accounts by the disbursing officers in subtreasury cities as elsewhere."

Under the Revised Statutes of the United States, section 3473, the Secretary of the Treasury can not receive in payment of duties on imports anything other than gold and silver coin, coin certificates, or demand Treasury notes. Under the same section no officer of the Government has a right to receive in payment of any other debt, demand, or taxes due to the United States anything other than "gold and silver coin, Treasury notes, United States notes, or notes of national banks." (See also *Miltenberger v. Cooke*, 19 Wall., 421; *American Brewing Co. v. United States*, 33 Ct. Cls. Rep., 348.)

Should this concurrent resolution be passed, it would not operate as an amendment or repeal of section 3473, because it would not be a law. An act of Congress can not be repealed except by another act of Congress which expressly or impliedly operates as a repealing act. A "concurrent resolution" is not an act of Congress because it is not submitted to the President for his approval, under Article I, section 7, of the Constitution, which provides that—

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States."

In the Fifty-fourth Congress a doubt was expressed in the Senate as to the propriety and legality of the practice of passing "concurrent resolutions" without presenting them to the President for his approval, and the question was referred to the Committee on the Judiciary, who rendered a report in which they thoroughly discussed the history and constitutionality of the practice, and reached the conclusion that it was lawful and proper, unless the resolution contained matter "properly to be regarded as legislative in its character," and further that the words of the Constitution, "to which the concurrence of the Senate and House of Representatives may be necessary," referred to the "necessity occasioned by the requirement of the other provisions of the Constitution, whereby every exercise of 'legislative powers' involves the concurrence of the two Houses," and hence did not prohibit concurrent resolutions without presentation to the President in cases where no exercise of the "legislative powers," conferred by the Constitution, was required. And, hence, that a resolution calling for a supplemental or additional report or estimate as to river and harbor improvements, being, in substance, little, if anything, more than a request or direction for information from a Department, did not require the approval of the President. (Senate Reports, 54th Cong., vol. 2, No. 1335.)

In this connection it may be noted that concurrent resolutions do not begin with the formula prescribed by Revised Statutes, sections 7 and 8: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," and "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled." They begin with the formula: "Resolved by the House of Representatives (the Senate concurring)," or "Resolved by the Senate (the House of Representatives concurring)," thereby indicating that the two Houses do not regard the contents of the resolution as "legislative" in their character.

The particular concurrent resolution under consideration, therefore, if passed, would operate no change in the present law: First, because an act of Congress approved by the President can only be repealed or modified, expressly or impliedly, by another act of Congress so approved; second, the resolution is merely advisory and contains no matter of a "legislative" character. If the matter which it contains should be construed to be of that character, the resolution would be void and inoperative because not presented to the President for his approval.

MAURICE D. O'CONNELL,
Solicitor of the Treasury.

[From the Revised Statutes of the United States.]

SEC. 3009. All duties upon imports shall be collected in ready money and shall be paid in coin (or coin certificates) or in United States notes, payable on demand, authorized to be issued prior to the twenty-fifth day of February, one thousand eight hundred and sixty-two, and by law receivable in payment of public dues. (See secs. 254, 3473.)

SEC. 3473. All duties on imports shall be paid in gold and silver coin only (coin certificates) or in demand Treasury notes, issued under the authority of the acts of July seventeenth, eighteen hundred and sixty-one, chapter five; and February twelfth, eighteen hundred and sixty-two, chapter twenty; and all taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes

of national banks (and upon every such payment credit shall be given for the amount of principal and interest due on any Treasury note not received in payment on the day when the same are received). (See secs. 254 and 3009.) (46, s. 5, v. 12, p. 313; 12 Feb., 1862, c. 20, v. 12, p. 338; 25 Feb., 1862, c. 33, ss. 1, 5, v. 12, pp. 345, 346; 11 July, 1862, c. 142, s. 1, v. 12, p. 532; 3 Mar., 1863, c. 73, ss. 3, 5, v. 12, pp. 710, 711; 3 June, 1864, c. 106, s. 23, v. 13, p. 106; 30 June, 1864, c. 172, s. 2, v. 13, p. 218; 27 Feb., 1877, c. 69, v. 19, p. 249. *Savage, executrix, v. U. S.*, 92 U. S., 482.)

SEC. 3620. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law (and draw for the same only in favor of the persons to whom payment is made); and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (See Sec. 5488.)

MR. HILL. Will you kindly state what the regulations of the Treasury Department have been with reference to the acceptance of certified checks by internal-revenue collectors?

THE CHAIRMAN. Those regulations are all in print.

MR. HALLOCK. I know the man who wrote that letter and I can answer everything in it, but not in half an hour, and please do not ask me to. Though not a lawyer, but a physician, I can answer everything in that letter.

MR. KAUFMANN, the treasurer of George Borgfeldt & Co., of New York, which pays the largest amount of customs dues of any firm in the United States, is here. He has a check in his pocket which he will show you, a certified check, bearing the indorsement of Mr. Hamilton Fish, which was accepted in one case, as it ought to have been in every case in New York City. You will have no trouble to get all the information. In addition to that, we have present a delegation from Baltimore.

THE CHAIRMAN. The committee would be glad to have you file a brief.

MR. HALLOCK. I thank you.

STATEMENT OF MR. E. KAUFMANN, TREASURER OF GEORGE BORGFELDT & CO., NEW YORK, N. Y.

MR. KAUFMANN. Mr. Chairman and gentlemen of the committee, I have been requested to appear here and tell you of the hardships and risks which importers have to undergo in order to pay duties into the Treasury.

In the first place, we import largely at all the principal ports of the United States. As the Treasury will not receive checks I am obliged to leave my office, go to the bank and draw the money in cash—which is sometimes a large amount, and it would be quite dangerous to trust messengers with it—take it down to the subtreasury, and there a certificate of deposit will be issued, which takes anywhere from one to three hours—I can either wait there that time or send down again for it—and then the certificate of deposit is forwarded to the port of entry where the ship enters. Newport News is a small port and there are small banking facilities there. We have large shipments arriving

there, sometimes 2,000 cases at a time, and it has been very troublesome. Through one of our banks in New York, the Citizens' Central National Bank, an arrangement was made whereby that bank opened an account in a Newport News bank where the collector of the port has his account. That has facilitated matters very much. We simply authorize our bank to transfer to the bank at Newport News so much of our money and pay it over to the collector of customs. That has worked out very well, so far as Newport News is concerned, but no such arrangement has been made in the other ports, and I do not know what difficulties there may be.

During the panic we had large shipments arriving. Our business is what is called holiday goods business. The goods arrive in the fall, and very often are late, and deliveries have to be made without delay so that there will be no cancellations. When currency became very scarce our banks said that they could not provide the large amounts, as they did not have them. So I called on the subtreasurer at the port—this was on October 29—to see whether they would accept certified checks, and they said they would. Here are two checks [exhibiting checks] of the same date aggregating \$21,000.

The CHAIRMAN. What date?

Mr. KAUFMANN. October 29.

The CHAIRMAN. Last year?

Mr. KAUFMANN. Yes, sir. You will see the indorsement on the checks.

Mr. CLARK. They simply suspended the law for that time?

Mr. KAUFMANN. We thought we were getting along very smoothly.

Mr. CLARK. That does not answer the question. They simply suspended the law for that time?

Mr. KAUFMANN. Of course.

The CHAIRMAN. I would like to ask whether this was a general custom or whether it was simply done during the panic?

Mr. KAUFMANN. This was the only exception. Three days later I presented three more certified checks, aggregating \$15,000, and the subtreasurer refused to accept them. Then I went back to our banks to get the cash. They said that while they would give me the cash for that once, they would not pay me any more cash during the panic. When the next shipment arrived I was obliged to look around for cash, where I could buy money. The bankers and the dealers in exchange had in mind the previous panic of 1893, when they were severely censured by the Government for having charged a premium on cash, which tended to aggravate matters and make them worse. I had a great time to get the money, willing to pay almost anything in order to release the goods, because the Government allows the merchant forty-eight hours in which to pay the duties, and if he does not, the goods are then stored and charges are made for insurance and storage, which, in our case, would amount to a very large sum, there being thousands of cases on one ship.

Finally I succeeded in getting money, for which I paid on that date 4 per cent premium. From that date up to December we had to pay a premium on currency with which to pay duties, which premiums amounted in all to over \$4,000.

Mr. CLARK. That was the fault of the banks?

Mr. KAUFMANN. The banks had to buy money themselves.

Mr. CLARK. That was because they did not have the money where it ought to have been.

Mr. KAUFMANN. The money had been withdrawn from the banks and the very fact that a premium was offered by us for currency tended to withdraw cash from the banks by the depositors.

The CHAIRMAN. The premium drew the money out of the safety deposit vaults?

Mr. KAUFMANN. Yes, sir; and out of the banks.

The CHAIRMAN. It became a sort of business?

Mr. KAUFMANN. Yes, sir.

The CHAIRMAN. Do you know of any other instance where the Government has actually received certified checks for customs duties?

Mr. KAUFMANN. I do not.

The CHAIRMAN. You do not know of any other instance?

Mr. KAUFMANN. No, sir.

The CHAIRMAN. That is the only instance you know of?

Mr. KAUFMANN. Yes, sir.

Mr. RANDELL. Did you buy this money from private individuals or from banks?

Mr. KAUFMANN. In one or two cases later on I got it from the banks, paying them a premium. In the beginning we could not get it from the banks and we bought it from brokers.

Mr. COCKRAN. You bought it principally from brokers?

Mr. KAUFMANN. Yes, sir.

Mr. COCKRAN. And only rarely got it from the banks?

Mr. KAUFMANN. Yes, sir.

Mr. COCKRAN. The banks actually discriminated among their depositors and allowed some of them to draw their money, provided they paid a premium, and refused to permit others to draw their money?

Mr. KAUFMANN. For the payment of business expenses and salaries the banks did not charge a premium. When it came to withdrawing large sums, for instance, if you deposited \$20,000 and would want to withdraw it the same day the banks simply could not pay it.

Mr. COCKRAN. You stated a moment ago that they could do it and did do it for a premium.

Mr. KAUFMANN. The banks did it; I do not know how generally it was done.

Mr. COCKRAN. The banks were bound to give that money to their depositors on demand, and if they refused to pay that money in order that they might charge the depositors a premium for doing what they were bound to do for nothing I would like to know it.

Mr. HALLOCK. I can answer that question. I understand this money that Mr. Kaufmann wanted was for the payment of customs duties at other ports—not at New York. So far as New York was concerned, he was able to get the money from the banks for that purpose.

Mr. COCKRAN. Do you know of any definite instance during this panic where a bank, having suspended payment which it was bound to make to all its depositors, relaxed that rule and sold the money that the depositors were entitled to to other persons?

Mr. KAUFMANN. Yes, sir. This cash was to pay duties at other ports.

Mr. COCKRAN. Did you, as a matter of fact, have to pay a premium to your own bank?

Mr. KAUFMANN. We did.

Mr. UNDERWOOD. What bank?

Mr. KAUFMANN. The Citizens' Central National Bank, of New York.

Mr. CLARK. Suppose the collector there had received the certified check; then he would have had to "hold the bag" instead of you. That was the only difference. He could not get the money out of the bank any more than you could.

Mr. KAUFMANN. No, sir; I think they got it from the clearing house.

Mr. CLARK. If the collector at New York had accepted the check, then he would have been in just as bad a fix as you were before he received the check—he could not get the money?

Mr. KAUFMANN. No, sir; I do not suppose he could.

The CHAIRMAN. Mr. Fish is the subtreasurer at New York?

Mr. KAUFMANN. Yes, sir.

The CHAIRMAN. Did he take the check?

Mr. KAUFMANN. He took the check; it was taken at the subtreasury.

Mr. UNDERWOOD. You spoke of the difficulty you had during the panic at the time the banks were not performing their functions; have you anything to say about the difficulties before the panic came on—during normal times?

Mr. KAUFMANN. No, sir; the only difficulty is that the banks have to deposit with the subtreasury every morning a certain sum of money for duties, which is drawn on during the day and the balance is returned the next morning.

Mr. RANDELL. Is that entirely satisfactory in normal times?

Mr. KAUFMANN. Yes, sir; so far as the merchant is concerned.

Mr. COCKRAN. Your idea is that the Government should accept the same checks as you accept in the ordinary course of business?

Mr. KAUFMANN. Yes, sir. Of course, at that time the banks had to look around to see where they could find the money, and they bought it in order to keep up the reserves, and as they bought it in large quantities they could afford to sell it a little cheaper. I do not think that was a general practice. In our case they may have made an exception because we use a great deal of cash.

Mr. HILL. You stated that in normal times every morning you had to send down to the subtreasury a large sum of money, from which the duties were paid. What you desire is that the Government shall do just the same as any other business institution—accept the certified checks of such banks as the collector of customs is willing to designate, that he will credit those checks as cash to the United States Government, and that the deposits be secured by deposits of bonds.

Mr. KAUFMANN. That would be a very satisfactory arrangement in every way.

STATEMENT OF MR. ROBERT RAMSAY, PRESIDENT CHAMBER OF COMMERCE, BALTIMORE, MD.

Mr. RAMSAY. This matter has been fully presented by Mr. Kaufmann, and as your time is valuable I will simply make a little statement.

1 We have come here to appeal to the committee to assist us in this matter. We think that the Government of the United States should

do its business the same as we do business among our fellow-merchants. As the Government is already accepting certified checks in payment of internal revenue, we can not see why they should make a different rule in connection with the customs duties. During the recent financial panic we had a good deal of difficulty in Baltimore. We were not assisted by the Secretary of the Treasury, as New York was, and the situation became so serious with us that at one time we were confronted with the fact that we would not be able to discharge our ships with foreign cargoes for the simple reason that the banks would not give up the currency. The currency reserve was limited, and they retained the currency for the regular depositors to enable them to disburse their pay rolls at the end of the week, pay salaries, etc. I will not weary you with any detailed statement, but simply make the request that you gentlemen consider this matter and see if you can not assist in having some enabling act passed authorizing the Secretary of the Treasury to accept certified checks.

Mr. UNDERWOOD. In normal times do you have any difficulty in handling your business?

Mr. RAMSAY. No, sir; except the great inconvenience of having to send to the banks to get notes or gold to pay the duties.

Mr. UNDERWOOD. Please explain the procedure that you have to go through which occasions this inconvenience of payment.

Mr. RAMSAY. We draw a check and send it by a clerk to the bank to get the money and then send the money over to the customs-house. We consider that if we could just as easily get a certified check and send it over to the subtreasury that that ought to be received.

Mr. UNDERWOOD. In other words, you want to have your check accepted for the payment of customs duties instead of having the inconvenience of carrying the cash there?

Mr. RAMSAY. Yes, sir; and then there is a great risk.

Mr. UNDERWOOD. I understood Mr. Kaufmann to say that in normal times the banks had to keep on deposit with the subtreasury a certain amount of cash, and that then they received checks drawn on those banks. Does that prevail in Baltimore?

Mr. RAMSAY. That does not prevail in Baltimore

STATEMENT OF MR. MORRIS WHITRIDGE, BALTIMORE, MD.

Mr. WHITRIDGE. I am here in a dual capacity, representing the Board of Trade of Baltimore, and I am also an importer in Baltimore, and I have had experience in banking. I had \$6,000 to pay in customs duties and I went to my usual bank and asked for the \$6,000—they had always given me sufficient currency to pay my clerks and pay roll—and they said they were very sorry, but they could not give it to me; that they would buy it for me in New York and charge me 4 per cent.

Mr. CLARK. Did you have any money in the bank?

Mr. WHITRIDGE. Yes, sir. I did not pay the 4 per cent, but by spending two or three hours going from one bank to another I got the \$6,000. That was in December during the panic.

The CHAIRMAN. Do you understand that they had to pay the 4 per cent?

Mr. WHITRIDGE. They bought it from brokers in New York. That was the first time in my experience that I was refused to have my check honored.

Mr. CLARK. Are you still doing business with that bank?

Mr. WHITRIDGE. Yes, sir; they were all in the same boat in Baltimore.

The CHAIRMAN. You want that liability shifted on the Government, so that in time of stress they would have to pay the 4 per cent?

Mr. WHITRIDGE. No, sir.

The CHAIRMAN. If they had taken your check they would have been in the same difficulty?

Mr. WHITRIDGE. The check would have been cleared through the clearing house.

Mr. HILL. Was not the United States Government withdrawing cash from the banks in Baltimore and putting it in the subtreasury?

Mr. WHITRIDGE. I do not know.

Mr. HILL. Where did your money go?

Mr. WHITRIDGE. It went into the subtreasury and was held there as a latent asset. I see no reason at all why, if you take a certified check on a well-credited bank—and I might say that we have a number of banks in Baltimore whose surplus is equal to the capital, strong banks—why you can not take a certified check and pay it over to the collector of customs. We are paying four or five hundred thousand dollars a year in duties to the Government of the United States, and I think we should have some accommodations, especially in times like the panic.

Mr. RANDELL. A certified check indicates that the money is in the bank?

Mr. WHITRIDGE. Yes, sir.

Mr. RANDELL. What is the use of certifying the check if the money is there?

Mr. WHITRIDGE. Sometimes I simply get them to certify a check when I do not actually have, say, \$10,000 in currency.

The CHAIRMAN. But would a bank certify a check for you unless there was an actual cash deposit?

Mr. WHITRIDGE. There would have to be a certain credit.

Mr. CLARK. Certain bank officials in New York are under indictment now for overcertifying checks.

Mr. BONYNGE. During the panic when a bank certified a check, did they not certify that they would pay the check in a clearing-house certificate? Did they certify that they would pay the check in actual money, or were not their certificates simply that they would pay the checks in clearing-house certificates?

Mr. WHITRIDGE. I can not answer that question.

Mr. RAMSAY. They were paid through the clearing house. Baltimore did not issue any clearing-house certificates.

Mr. HILL. There are depository banks in Baltimore?

Mr. WHITRIDGE. Yes, sir.

Mr. HILL. Where the Government's money is deposited?

Mr. WHITRIDGE. Yes, sir.

Mr. HILL. Those banks have to put up bonds as security for the Government's deposits?

Mr. WHITRIDGE. Yes, sir.

Mr. HILL. Why should not the Government accept the certified check of its own depository bank instead of demanding that you should actually draw out the money and take it to the custom-house to pay your duties?

Mr. WHITRIDGE. I see no reason.

Mr. HILL. It would be simply a matter of business?

Mr. WHITRIDGE. Yes, sir.

Mr. HILL. Do you know of any business rule that would be violated by that practice on the part of the Government?

Mr. WHITRIDGE. No, sir.

Mr. HILL. Do you know of any reason why the Government should have a preference over the citizens of this country in transacting business in the same way?

Mr. WHITRIDGE. No, sir.

Mr. HILL. And that is the practice with reference to the internal revenue?

Mr. WHITRIDGE. Yes, sir.

STATEMENT OF MR. MOSES NORRIS, BALTIMORE, MD.

Mr. NORRIS. I represent the Baltimore and Ohio Railroad. I am their customs agent. I pay all the money that is paid in Baltimore through the Baltimore and Ohio Railroad for the George Borgfeldt Company and various other importers, and I can only confirm what Mr. Kaufmann has said, that during the business stringency in the money market we had great difficulty. Of course we received checks for duties, which we deposited in our bank and turned the cash over to the collector of customs. When we found that we could not obtain cash money, of course, we had to appeal to the importers to furnish us with the cash, which they finally did after a great deal of difficulty.

Mr. CLARK. In ordinary times, does the Government actually require that this law be complied with and that the duties be paid in gold, or do they take greenbacks?

Mr. RAMSAY. They take anything but national-bank notes.

Mr. CLARK. In ordinary times?

Mr. RAMSAY. Yes, sir. They never take bank notes. It has to be legal tender.

Mr. NORRIS. Our strong point on this question is that we do not see why the duties can not be paid by certified checks just the same as the internal revenue. In Baltimore the duties collected from internal revenue amount to about \$7,000,000 a year and it is all handled through certified checks.

Mr. UNDERWOOD. The duties are only payable in gold, and certified checks do not call for gold. Do you not think that the duties should be payable in any lawful money?

Mr. NORRIS. They accept anything except bank notes.

Mr. UNDERWOOD. Are you in favor of amending the law so as to make the duties payable in any lawful money?

Mr. RAMSAY. Yes, sir.

Mr. HILL. Do you not pay in any legal money now?

Mr. RAMSAY. Yes, sir; anything except bank notes.

Mr. HILL. As a matter of fact, do they not accept bank notes?

Mr. RAMSAY. Not national-bank notes. They accept the greenbacks and gold notes.

Thereupon the committee adjourned.

ADDITIONAL STATEMENT SUBMITTED BY MR. JAMES C. HALLOCK.

[For Mr. Hallock's oral statement see pp. 189-195.]

In his letter of March 5, 1908, which has been read to your committee, the Treasurer of the United States informs the Secretary of the Treasury that bank checks can not be received in payment of public dues "without an absolute violation of the law which provides that only gold and silver coin, coin certificates, Treasury notes, United States notes or national-bank notes shall be accepted."

Formerly, as a collector of internal revenue in New York, Mr. Treat received checks. Last fall a New York importer, who had difficulty in getting cash to pay duty on fruit, put this question to the Treasurer: "Can not the Treasury do its part in helping the situation by accepting certified checks on our banks in payment of the duty?" In his published reply of November 9, 1907, Treasurer Treat said:

The law requires that duties be paid in cash and the collector accepts checks entirely on his personal responsibility.

Under normal conditions there was practically no risk in doing so, but this office is informed that it is now very difficult and usually impossible to have checks cashed.

For forty-five years collectors of internal revenue have received checks in New York, except occasionally, as last fall. Always on their own responsibility, it is true, but never really as lawbreakers. Suppose one collector receives 100,000 silver dollars, weighing about 3 tons, and deposits them in a depository bank, which gives him a certificate of deposit for \$100,000; while another receives \$100,000 of certified checks and, depositing them, also gets a certificate for \$100,000. Suppose all the dollars and checks good. Would he who receives the checks violate any law in any fair sense of the term? Would he not be receiving the equivalent of coin and satisfying the law, in effect?

In the fiscal year 1907 not a dollar of internal revenue was deposited in the subtreasury at New York, whereas the collections were \$22,500,000, which the collectors deposited in banks. Of the total collection (\$269,000,000) only \$38,384 was deposited in subtreasuries and all the rest in banks. On the other hand, with \$225,982,812 of customs collected in New York all was deposited in the subtreasury and none by the collector in banks.

In his letter the Treasurer says further: "The policy of the Treasury Department has always been to accept checks subject to collection, no credit being given until payment of the same has been received in money." This is a downright admission that checks are accepted. And it is a fact that they are, a fact which his annual reports confirm. Table No. 46 of the report for the fiscal year 1906 gives the amounts of checks sent to the New York clearing house by the subtreasury at New York (\$313,090,823) and checks received from the clearing house (\$427,317,557), making the total sent and received \$740,408,380.

His table proves conclusively that checks are given and accepted by United States officials, but not that payment of all the checks is "received in money." Of those sent to the clearing house \$26,268,218 was paid in money and \$286,822,605 not paid in money, but cleared or offset without money by balancing accounts with the clearing house.

The Treasurer warns the Secretary in this letter that "to accept checks from any bank would carry with it a great responsibility" and "perhaps might result in a great loss," "for a certified check when received by an official releases all other parties to the paper." How could certification release them, unless the official failed to present the check for payment with due diligence, which neglect would be his own fault?

Every business man will heartily agree with the Treasurer that "the Government should not be placed in a position where it would have difficulty in promptly collecting money due it in order to meet its expenditures." He recalls "the difficulties encountered in collecting certified or other checks from the banks, not only by the Treasury, but by disbursing officers who kept their accounts in depository banks in cities where a subtreasury was not located." Of course they found it difficult, during the recent financial trouble, to collect the checks in currency when it was at a premium. But did the Government have to collect them in currency "in order to meet its expenditures?" Could not the checks be deposited in banks and the deposits checked out "to meet its expenditures?" A disbursing officer at public works in course of construction requires cash from his bank for pay rolls, but settles for ordinary purchases by check.

The Treasurer points out the necessity of some arrangement for officials to collect upon receipt the certified checks "either through depository banks or through messenger service from the subtreasury." The customary way to collect them is through depository banks, as all internal-revenue collectors everywhere throughout the Union and collectors of customs outside of subtreasury cities now do. Ought the collector of customs in New York, if he received checks, to send them out by messengers C. O. D. to gather the cash? He is doing that now substantially, only it is the banks who bring the cash daily to the subtreasury in advance, before they give their customers the tickets or "transfers," which the collector accepts in payment of duties, and which are practically drafts on this cash in the subtreasury.

The Treasurer fears that accepting checks would require "a knowledge of the financial stability of hundreds of banks, which would be a most onerous burden unless a bureau of information were established." Judge Story in 1830 laid down the rule that if a collector receives a check it is at his own peril. So it should be. The collector at New York, for instance, should accept only such checks as entailed practically no risk, like those drawn on the banks in which he deposited his receipts, or checks on banks that are not likely to default. The banks in which he deposited would be his "bureau of information," if he needed any.

The Treasurer also fears that accepting checks would somehow diminish the collateral security which protects public deposits. The security is furnished by the bank in which the collector deposits his receipts, including the checks for collection. If the check be not good it is like a counterfeit coin or bill, which no collector is authorized to receive. Accepting checks has nothing to do with the collateral security behind the deposits. If the deposits in any bank exceeded the security, the excess would be transferred to another bank or other banks which furnished security. To avoid the necessity of transferring excess deposits to the subtreasury, which would

take the money out of the channels of trade, the depositary banks at subtreasury cities, certainly at Baltimore, as I happen to know, would be willing to put up with the assistant treasurers in their respective cities an amount of securities which would cover any probable aggregate of deposits arising from customs, internal-revenue, and miscellaneous receipts placed with them.

This official letter to the Secretary, which bears the Treasurer's signature, misrepresents the proposed legislation and misquotes the existing law, suppressing essential parts, doubtless to be brief.

House Concurrent Resolution No. 15, instead of "providing for the receipt of certified checks of banks in payment of all public dues and the drawing of checks against the depositary accounts, by disbursing officers in subtreasury cities, as elsewhere," is "merely advisory," as the Solicitor of the Treasury correctly states in his opinion, which accompanies the letter. No citizen is obliged to accept a check in payment, no official should be. On the other hand, in New York, for example, there are banks that for a hundred years since their organization have paid every check properly drawn against them. Shall not the collector of customs be permitted, at his own risk, to accept checks on such banks and others, not so old, but equally good?

The Solicitor, implying the impossibility of receiving checks for customs, says: "Under the Revised Statutes, section 3473, the Secretary of the Treasury can not receive, in payment of duties on imports, anything other than gold and silver coin, coin certificates, or demand Treasury notes." He abbreviates the section. In full it specifies the particular kind of "demand Treasury notes" receivable, namely, those "issued under the authority of the acts of July 17, 1861, chapter 5; and February 12, 1862, chapter 20," thus excluding all United States notes, known as greenbacks, which were issued under the act of February 25, 1862, and subsequent acts. Consequently the section prohibits the receipt of greenbacks quite as much as checks.

Moreover, there is a statutory prohibition expressly forbidding a tender of greenbacks for customs. Section 3588, Revised Statutes, reads: "United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt." This prohibition is printed on the back of every "United States note."

But in December, 1878, Secretary Sherman notified Congress in his annual report that "the Secretary will feel it to be his duty, unless Congress otherwise provides, to direct that after the 1st day of January next [1879], and while the United States notes are redeemed at the Treasury, they be received the same as coin by the officers of this Department in all payments in all parts of the United States." Congress has not otherwise provided, and for the thirtieth year United States notes or greenbacks are still received in payment of customs duties, the law to the contrary notwithstanding.

The Solicitor, continuing his opposition to the receipt of checks, says: "Under the same section [3473] no officer of the Government has a right to receive in payment of any other debt, demand, or taxes due to the United States anything other than 'gold and silver coin, Treasury notes, United States notes, or notes of national banks.'"

Does the Solicitor of the Treasury say that checks are not received for debts, demands, or taxes due to the United States? By no

means. On the contrary, the two cases he cites, while showing the opinions of the United States Supreme Court and Court of Claims to be that a collector in accepting a draft or check in payment of a tax acts at his own risk and does not bind the United States, are records of the fact that in 1866 and again some thirty years later collectors of internal revenue were receiving certified checks or drafts in payment of taxes without the Government either repudiating or sanctioning such acts, but tacitly consenting to and encouraging them.

In November, 1878, Secretary Sherman made arrangements with the New York clearing house by which the assistant treasurer at New York became a member and for thirty years has exchanged checks there with the other members. Similar arrangements have been made with other clearing houses, as at Boston, Chicago, and St. Louis. The Treasury's connection with clearing houses is of itself proof that officials give and take checks, for if they did not both tender and receive checks or drafts they would have nothing to clear and no occasion to join any clearing house.

In the Treasurer's letter another point remains to be considered, which is taken up last because of its importance and curious history. In making this point the Treasurer starts off right enough: "Section 3620, Revised Statutes, directs that every disbursing officer having any public money intrusted to him for disbursement shall deposit the same with the Treasurer of the United States, or some one of the assistant treasurers of the United States." The rest is so abridged as to convey a false idea of the law, which without the context appears to restrict the powers of the Secretary as well as those of disbursing officers. The Treasurer dismisses the section with these few words as if they ended it: "In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may specially authorize the deposit of such public money in any other public depository." In other words, he makes the section read as if the Secretary could not authorize disbursing officers to open disbursing accounts in banks at Washington or any subtreasury city.

This is no new point. It was raised in 1866 by Treasurer Spinner with a request for instructions and settled by Secretary McCulloch, who instructed him, then and there, that the law clearly justified the Treasury Department, wherever it might be deemed advisable or necessary, to keep the public money in any other places than the offices of the Treasurer and assistant treasurer of the United States. This unlimited power of the Secretary is asserted in an unbroken line of Treasury circulars for forty years, from 1866 to date. The latest circular, dated December 7, 1906, declares that "any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some assistant treasurer, or, by special direction of the Secretary of the Treasury, with a national bank depository nearest or most convenient." That is to say, the Secretary can direct disbursing officers to deposit in national banks anywhere, inside or outside of subtreasury cities.

Observe that the word "places" is used by Treasurer Treat and Secretary McCulloch, but not in the same way. Mr. Treat uses "place" in the commercial sense as a synonym of city or port. To him the place where the assistant treasurer at New York is included at least the whole Borough of Manhattan, if not other bor-

oughs of Greater New York. Mr. McCulloch gave "place" its common meaning of any location. In his view New York contained, besides the office of the assistant treasurer, "other places," as at a bank across the street, or on the next block, or uptown, or in the suburbs.

In questioning the Secretary's authority to permit these deposits of disbursing officers in banks at subtreasury cities, Treasurer Treat is not supported by the legal opinion which he obtained from the Solicitor of the Treasury and transmitted to the Secretary as an inclosure in support of other contentions. Was the Solicitor not asked to define the duty of disbursing officers? His silence concerning section 3620, Revised Statutes, is significant. Section 3620 was construed by the Attorney-General in 1877. The Treasury Department is bound by his opinion. The Solicitor of the Treasury, even though he might not agree with the Attorney-General, would have no power to qualify or overrule it.

The prejudice of the Department against banks in subtreasury cities is such that Treasury officials, disregarding the plain intent of the law, the good sense repeatedly expressed in Treasury instructions and circulars, and the perfect justice of the Attorney-General's opinion, have succeeded in keeping disbursing accounts out of banks in subtreasury cities since 1866, except for comparatively small sums of money paid into United States courts, etc.

It cost me months of research to understand the intricacies and inconsistencies of Treasury practice in this matter and discover the true meaning of the law, which is quite unintelligible without the aid of Treasury instructions or circulars and the opinions of Attorneys-General. All this I set forth to the Secretary of the Treasury in my letter of August 19, 1907, which will be appended to this statement.

I have already explained to what extent public money was deposited in banks during the three periods since 1789 and to what extent checks were received by collectors of customs or other revenue during the several periods. It remains to describe how and by whom the public deposits were checked out at the different periods.

The act of September 2, 1789, establishing the Treasury Department, made it "the duty of the Treasurer to receive and keep the moneys of the United States and disburse the same." Section 3593, Revised Statutes, says that "all public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law."

Since the actual expenditures of the Government are made, for the most part, not by the Treasurer or assistant treasurers acting for him, but by disbursing officers, the checks of these most useful and unappreciated agents of the Treasury are almost all that need be considered. To these disbursing officers the Treasurer gives warrants transferring money which they check out.

The act of March 3, 1809, provided that disbursing officers and agents should, whenever practicable, keep the public moneys in their hands in some incorporated bank, to be designated by the President of the United States. During the entire period from 1789 to 1846 disbursing officers kept the public money intrusted to them in banks designated by the Secretary of the Treasury, or by the President, or by law in the case of the second Bank of the United States.

In the second period, from August 6, 1846, to August 5, 1861, not only was it a felony for them to deposit in banks, but also they were not permitted, from 1846 to 1853, to open an account with the Treasurer or an assistant treasurer—that is, not permitted to make any payment in Treasury drafts to the public creditors, even at the request of such creditors. The disbursing officers literally, upon presenting for payment their warrants on the Treasury, had to take actual cash, and were left to do pretty much as they chose with it. At the same time no adequate security was provided by the law of 1846 for the safety of the public money in their hands.

In June, 1853, Secretary Guthrie, on his own responsibility, directed the Treasurer and assistant treasurers, upon application, to receive on deposit from disbursing officers any public money which might be in their hands, and permit them to check out the same from time to time and in such sums as the public service committed to their care might require.

In 1854 it was officially reported that officers residing at a distance from any depositary kept their funds in the iron chests of merchants with the understanding that they were not to be used by these merchants. Certain disbursing officers deposited in banks and checked on the public moneys as they would on their private funds.

At the close of Pierce's Administration what had been done by a mere order of the Secretary was legalized by the act of March 3, 1857. Disbursing officers were now required (no longer invited) to deposit their moneys "with the Treasurer of the United States, or some one of the assistant treasurers or public depositaries."

From the beginning of the third period, August 5, 1861, disbursing officers might have deposited in solvent specie-paying banks, if the moneys obtained on loans then authorized had been transferred to them for disbursement. But it was not. Their first legally authorized deposits in banks since 1846 were made under the act of 1863, authorizing the appointment of national banks as depositaries. For three years, from 1863 to 1866, disbursing officers deposited in national banks wherever they pleased, in Washington, Baltimore, New York, in the largest city or the smallest town, as it happened to suit them. Naturally some of them abused the privilege, as detailed in my letter to the Secretary, appended hereto.

To place the deposits of disbursing officers under proper control, the act of June 14, 1866, was passed by Congress without opposition or much debate. This act, so far as it applied to their deposits in banks, practically revived the act of 1809, which required them to deposit in some incorporated bank designated by the President of the United States. By the act of 1866 it was the Secretary of the Treasury who was to designate the bank. But the act was so ambiguously expressed that it appeared to deprive even the Secretary of the power to designate any bank in Washington or any subtreasury city. The Secretary, as soon as practicable, on August 24, 1866, gave the Treasurer instructions, assuming the unlimited power of the Department to designate any national bank anywhere. All Treasury circulars on checks of disbursing officers have been based, since 1866, on that assumption. But, all the same, the practice of the Department since 1866 has been to designate no bank in any subtreasury city for the deposit of public money intrusted to any disbursing officer for disbursement.

The opinion of the Attorney-General in 1877, while incidentally confirming the unlimited power of the Secretary over the designation of depositories for this purpose, was given to remove another ambiguity in this carelessly-written law. Section 3620, Revised Statutes, requires every disbursing officer to deposit public money "and draw for the same only in favor of the persons to whom payment is made"—that is to say, literally, to draw no check payable to order or to bearer. This restriction was found in the law of March 3, 1857. The Secretary of the Treasury, in his annual report for 1857, explained that disbursing officers could not discharge their duties if a literal compliance with the law had been required by the Department. How could drafts, which were not payable to order or bearer, and, therefore, not negotiable, be used by pursers in the Navy settling with the officers and crew of a vessel in foreign ports; by paymasters in the Army at remote points from any public depository, or by disbursing agents charged with the payment of Indian annuities?

In 1874 the revisers of the statutes dropped the phrase "draw for the same only in favor of the persons to whom payment is made." But Congress restored it by the act of February 27, 1877, "to perfect the revision." Then Secretary Sherman asked the Attorney-General for a construction of the clause, and on June 4, 1877, the Attorney-General decided that the question was one of administrative expediency, and that whether checks of disbursing officers shall be made payable only to the persons entitled to payment, or to bearer, or to order, is a matter to be regulated entirely by the discretion of the Secretary.

The wording of section 3620, which is only made intelligible by Treasury instructions, Treasury circulars, and opinions of the Attorney-General, is a disgrace to American jurisprudence.

Obviously section 3620 should be amended—

1. By adding the words "or their order" after the words "persons to whom payment is made."
2. By inserting the words "or any authorized depository" after the words "by draft or warrant on the Treasury or an Assistant Treasurer."
3. By striking out the words "in places where there is no treasurer or assistant treasurer."
4. By striking out, further on, the word "other" before "public depository."

In conclusion, though the accompanying letter of mine demonstrates that the existing law, as interpreted and construed by Secretaries of the Treasury and Attorneys-General, is sufficient to authorize the full use of checks and bank deposits by collectors and disbursing officers, the fact that the Treasurer, speaking for Treasury officials, does not propose to regard any merely advisory legislation, will make it necessary, while preserving the discretionary power of the Secretary in all cases, to authorize and direct him to permit, in his discretion and under such regulations as he may prescribe, the receipt of certified checks in payment of all public dues, the deposit of the checks in depository banks, the transfer of the deposits to disbursing officers, and the drawing of checks against such disbursing accounts by the disbursing officers in subtreasury cities, as elsewhere

Respectfully submitted.

JAMES C. HALLOCK.

332 MARYLAND AVENUE NE.,
Washington, D. C., August 19, 1907.

HON. GEORGE B. CORTELYOU,
Secretary of the Treasury, Washington, D. C.

DEAR SIR: There is talk of discarding one Attorney-General's opinion and asking for another in regard to the recommendations of the Baltimore clearing house as to deposits of public moneys in national banks. Can that be done? The head of a Department can not require the Attorney-General's opinion as to his power to do an act unless it is his intention to do it if he has the power. (20 A. G. Opin., 728.) In the present case the Secretary already has the power, according to the Attorney-General's construction. The law, as construed, leaves it to the discretion of the Secretary. He needs no further opinion to carry out these recommendations. And if the intention be not to do it, how can he require the Attorney-General to give another opinion?

The point some would unsettle and resubmit is, Can the Secretary authorize a disbursing officer to deposit or keep in a national bank depositary at Washington or a subtreasury city like Baltimore any public money intrusted to him for disbursement? In 1877 Attorney-General Devens advised Secretary Sherman that, when the Secretary deemed it essential to the public interests, he might specially authorize such deposits in any public depositary or in any other manner. (15 A. G. Opin., 288.) Unlimited power to locate a disbursing officer's account in any convenient national bank depositary has been asserted over and over again in Treasury circulars for forty years (1866-1906) by Secretaries McCulloch, Boutwell, Bristow, Gage, and Shaw, and questioned in no circular I have seen or heard of during months of research.

To begin with, in 1864 (March 19) Attorney-General Edward Bates advised Secretary Salmon P. Chase that disbursing officers might avail themselves of national bank depositaries, except for the deposit of receipts from customs. (11 A. G. Opin., 27.) In 1865 (May 30) the Paymaster-General of the United States Army sent out the following circular to paymasters: "Whenever drafts are remitted by the Treasury to yourself, or for your disbursing credit, with any authorized depositary (subtreasury or national bank), you will keep the same on deposit in that place until exhausted by your checks in process of your official requirements. In other words, the practice of transferring large sums from the place where the Treasury places them to your credit, to other places or depositaries in the same city or neighborhood, is peremptorily forbidden. Nor will any such transfers be made from one city to another, except as public necessity shall demand. It is desirable and proper that the depositaries which furnish the funds shall have the benefit of the deposit during the process of disbursement."

In 1866 (May 4) the Merchants' National Bank of Washington, D. C., failed with \$762,312 to the credit of United States disbursing officers and agents, Paymaster Paulding having to his credit \$500,851, made up for the most part of sums drawn from other depositaries and transferred to this bank, contrary to the above order of the War Department. The Treasury held but \$100,000 of collateral as security for all these United States deposits, the bank paid less than 25 cents on the dollar, and the Government lost about \$500,000.

On May 25, 1866, to correct such abuses Mr. Hooper, of Massachusetts, reported from the House Committee on Banking and Currency a bill which passed the House on June 6 and the Senate on June 11, and became the act of June 14, 1866, "to regulate and secure the safe-keeping of public money intrusted to disbursing officers of the United States." (Secs. 3620, 5488, and 5497 of the Revised Statutes.)

On July 2, 1866, United States Treasurer Francis E. Spinner asked Secretary Hugh McCulloch for written replies to various questions arising under this law, and among them the question, "May drafts in satisfaction of warrants, in favor of disbursing officers, be issued on national banks or other designated depositaries, or shall they (drafts) be made only on the Treasury or an assistant treasurer, without regard to place or convenience of payment?"

On August 24, 1866, Secretary McCulloch instructed Treasurer Spinner that the law "authorizes the Secretary of the Treasury, 'in places where there is no Treasurer' or assistant treasurer of the United States," to 'specially authorize in writing the deposit of public money in any other public depositary, or in writing authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payment to public creditors.' These provisions are broad and comprehensive in their character, and clearly justify the Treasury Department, wherever it may be deemed advisable or necessary to keep the public money in any other places than the offices of the Treasurer and assistant treasurer of the United States, in authorizing the *drawing and transferring* of the same therefrom by the usual modes of transfer into the hands of disbursing officers, or otherwise, in

such a manner as to facilitate payments to public creditors instead of the useless and expensive form of first transferring public money from such place of deposit to the office of the Treasurer or an assistant treasurer, and thence transferring the same to the places where the funds are needed to make the necessary payments."

In closing, Secretary McCulloch instructed the Treasurer "to fully observe all the provisions of the law designed to prevent the keeping of the public money in unauthorized places of deposit." After this warning an official definition of authorized and unauthorized places was to be expected. It appeared the same year.

In 1866 (December) Treasurer Spinner gave notice (see *National Republican*, December 28, 1866) that deposits of public moneys may be made only as follows: "Deposits of collections or receipts of all public moneys by all kinds of United States officers with the Treasurer or an assistant treasurer of the United States, or, except receipts from customs, as hereinafter mentioned, with a national bank designated as a depository under the provisions of the national currency act, and with no others. * * *

"Deposits of disbursing officers may be made with the Treasurer or an assistant treasurer of the United States, or with a depository specially authorized for that particular purpose by the Secretary of the Treasury, under the authority of section 1 of the act approved June 14, 1866, and with no others." (Sec. 3620, R. S.)

According to this a disbursing officer must deposit in the Treasury, a subtreasury, or some place designated by the Secretary. These are the authorized places; all others are unauthorized. Secretary McCulloch claimed the right to authorize the keeping of public money "in any other places than the offices of the Treasurer and assistant treasurer." Such places might be anywhere, far or near, in or out of the same cities as the offices. Whether another place than the offices was authorized or unauthorized did not depend upon its location outside or inside certain cities, but solely upon its being authorized by the Secretary or not.

The Treasurer's definition of authorized and unauthorized places, under the Secretary's instructions of 1866, is repeated without essential change in all subsequent Treasury circulars on the subject.

In 1869 (November 23) Secretary George S. Boutwell issued "instructions concerning public money intrusted to, and the checks of, United States disbursing officers," which said: "All public money advanced to disbursing officers of the United States must be deposited immediately, to their respective credits, with either the United States Treasurer, some assistant treasurer, or designated depository, other than a national bank, nearest or most convenient; or, by special direction of the Secretary of the Treasury, with a national bank depository," except in certain unimportant cases when the money need not be deposited.

In 1872 (January 2) the Secretary used the same language as above in Independent Treasury Circular No. 1.

In 1876 (January 3) Secretary Benjamin H. Bristow issued "Regulations for the deposit of public moneys," which said, under the head of "Disbursing funds:" "Deposits of such moneys may be made with the Treasurer, an assistant treasurer, or any designated depository of the United States, if specially authorized by the Secretary of the Treasury for that purpose under the act of June 14, 1866 (sec. 5153, Revised Statutes of the United States), and not otherwise. In case no such special authority has been given to a convenient depository, applications should be made to the Secretary of the Treasury for such authorization."

In 1876 (August 24) during the incumbency of Secretary Lot M. Morrill, Acting Secretary Charles F. Conant issued a circular of "Instructions relative to public moneys and official checks of United States disbursing officers," which, after publishing sections 3620 and 5488 of the Revised Statutes, continued:

"In accordance with the provisions of the above sections any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits with either the United States Treasurer, some assistant treasurer, designated depository other than a national-bank depository nearest or most convenient, or, by special direction of the Secretary of the Treasury, with a national bank depository, except—" [in certain unimportant cases, when money need not be deposited].

In 1897 (August 14), that is, after a lapse of twenty-one years, and the discontinuance of depositories other than national banks, Secretary Lyman J. Gage issued another edition of the instructions of August 24, 1876, with some slight changes, to wit:

"Any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits with either the United States Treasurer, some assistant treasurer, or, by special direction of the Secretary of the Treasury, with a national bank depository nearest and most convenient. * * *

† In 1906 (December 7) Secretary L. M. Shaw issued the last edition of these instructions in the same terms as Secretary Gage used in 1897.

The power of the Secretary over the deposit of public money intrusted to disbursing officers for disbursement is stated by Attorney-General Charles Devens in his opinion of June 4, 1877, to be as follows:

"By the act of June 14, 1866, the Secretary of the Treasury might, when he deemed it essential to the public interests, especially authorize in writing the deposit of such public money in any other public depository [according to the context, any other than those authorized under the act of March 3, 1857; hence, any national bank depository] or in writing authorize the same to be kept in any other manner, and under such rules and regulations as he might deem most safe and effectual to facilitate the payments to public creditors." (Sec. 3620, R. S.)

Thus the opinion of the Attorney-General agrees perfectly with that expressed by Secretary McCulloch eleven years previously (1866), and published or adopted by every Secretary of the Treasury for forty years down to the present day.

The practice of the Treasury has also been consistent with its instructions and the Attorney-General's opinion. For example, army paymasters had disbursing accounts in national banks at Washington and subtreasury cities from 1864 (possibly 1863) down to May or June, 1866. That they had such accounts in Washington, New York, and Philadelphia is recorded in the House debate of June 6, 1866, as well as indicated by Paymaster-General B. W. Brice in his circular of 1865, already mentioned, and in his annual report to the Secretary of War for 1866, where reference is made to "the large loss of paymasters, deposits by the fraudulent bankruptcy of a national bank in this city (Washington). That bank, however, being an authorized designated depository of the Treasury, whatever may have been the delinquency of an individual paymaster, the responsibility of the public loss can in no just sense attach to this Department (of War)"

Secretary McCulloch deemed it no longer advisable to let disbursing officers have disbursing accounts in banks at Washington or subtreasury cities, an interdict that may have appeared necessary when the Treasury was not keeping tab on the deposits of disbursing officers and could not tell how much of their funds was in any depository bank. With improved methods of accounting, the Treasury has for many years obtained daily reports from national-bank depositories, showing every day the aggregate balance to the credit of disbursing officers in each bank. From the time that was done what necessity could there be for treating national banks in ten of our principal cities as unsafe places for disbursing accounts? These banks have always been considered proper places for deposits of internal-revenue receipts and moneys specially transferred to them by the Secretary from the Treasury. Nevertheless, since 1866 or thereabouts Secretary after Secretary has deemed it advisable to have no disbursing accounts in banks at Washington or any subtreasury cities. And some persons have supposed from this that Congress stripped the Secretary of all power to authorize having such accounts in banks there.

While the Attorneys-General have never claimed for their official opinions the force of law, it has always been regarded as the proper practice to follow their guidance, and Congress, while never directly legislating upon this point, seems to contemplate that they are to be given practical effect. (R. S., 358; 20 A. G. Opin., 648.) Administrative officers should regard them as law until withdrawn by the Attorney-General or overruled by the courts. (20 A. G. Opin., 659.) And a question once definitely answered by a former Attorney-General and left at rest for a long term of years should be reconsidered only in a very exceptional case. (21 A. G. Opin., 24; 24 A. G. Opin., 54.)

What is there exceptional about this opinion of 1877? It is not obsolete, but still in full force and use. For thirty years it has been the recognized legal authority in the matter of permitting disbursing officers to draw checks payable to order. This part of the opinion the Department would not think of discarding. Another part is equally important. Is that not binding? Can an opinion be half sound and half unsound? Impossible. Those who would disregard the Attorney-General's opinion, as well as the written and published instructions of the Treasury, so misapprehend the law as to imagine that the United States Government can not legally authorize any disbursing officer to have a checking account in any bank at Washington, Baltimore, New York, Philadelphia, Boston, Cincinnati, Chicago, St. Louis, New Orleans, or San Francisco, where there are 180 national banks, of which 43 are regular United States depositories and 70 were special depositories in 1906.

According to law, as construed by Attorney-General Devens in 1877 and undisputed in any Treasury circular, a disbursing officer must deposit in the Treasury or a subtreasury and in no other place without the special direction of the Secretary. But where that other place is, whether inside or outside of Washington or of any subtreasury city, whether in the Riggs National Bank across Pennsylvania avenue or

the Metropolitan National Bank across Fifteenth street, whether in Philadelphia on Chestnut street or at Frankfort, to accommodate the United States arsenal there, which is within the city limits, but as far away from the subtreasury as Hyattsville from the Treasury; all that is a matter of administrative expediency to be regulated entirely by the Secretary's discretion.

George B. Cortelyou is the first Secretary of the Treasury in over sixty years who has had the power to deposit public moneys of all kinds (including customs receipts) in bank depositaries. Let us see what is being done by the Department in subtreasury cities.

At Baltimore in 1906 collectors received \$6,636,000 of internal revenue and deposited only \$28,000 of it in the subtreasury, all the rest in banks. Not a dollar of these bank deposits was drawn out in checks. The whole \$6,600,000 was gradually carried by the banks to the subtreasury under general orders, and checked against there. This is what Secretary McCulloch in 1866 officially called "the useless and expensive form of first transferring public money from such places of deposit to the office of the Treasurer or an assistant treasurer."

The Baltimore banks ask to have these funds drawn and transferred from them by the usual modes of transfer, that is, by checks, into the hands of disbursing officers, who shall, in turn, open disbursing accounts with the banks and check out the money to public creditors. Such a request can not, in reason, be refused.

In 1906 disbursing officers paid out \$10,000,000 at Baltimore, not including \$2,266,000 of post-office disbursements. If permitted to draw bank checks, they would have drawn out all the internal-revenue receipts, and \$5,145,000 of customs receipts, if the latter had been deposited in banks. In addition, the Treasurer or assistant treasurer paid out nearly \$6,000,000 by warrants and checks. Altogether they disbursed more than the entire customs, internal-revenue, and miscellaneous receipts of Baltimore, bringing in moneys by transfers from other subtreasuries to make up the balance. Consequently, there is no excuse for transferring current receipts in Baltimore from the banks to the subtreasury, as the deposits would be needed to pay checks against them, if allowed to remain in the banks until disbursed.

In Washington and each of the nine subtreasury cities this "useless and expensive form" of transferring moneys from the banks to the Treasury or subtreasury before disbursement has given rise to peculiar unbusinesslike usages.

A return to business methods after their violation for seventy years will be a brilliant achievement, a pledge of national progress, a promise of new life and pure wisdom in the management of our finances. It will mean the continuance of prosperity. Our country needs assurance of discretion in the conduct of affairs.

Very respectfully,

JAMES C. HALLOCK.

LETTER OF MR. JAS. M. BECK, ATTORNEY FOR CITIZENS' CENTRAL NATIONAL BANK.

NEW YORK, April 16, 1908.

HON. SERENO E. PAYNE,

Chairman Ways and Means Committee, Washington, D. C.

MY DEAR SIR: I represent the Citizens' Central National Bank, of this city.

I am informed that at a hearing before the Ways and Means Committee on the 8th instant, a Mr. Kaufmann, who was giving his views to the committee as to the merits of a proposed act which was introduced in Congress by Mr. Hill, stated to the committee, in substance, that he, then being a depositor of the Citizens' Central National Bank, was obliged to pay a premium to the bank to obtain gold which he needed to pay customs duties at other ports than the port of New York.

I do not understand that Mr. Kaufmann said this with any intention of reflecting upon the bank in question, but, that, on the contrary, he stated, that the banks only charged a premium for gold which they furnished their depositors when they were obliged to buy the gold themselves.

Nevertheless, I understand that Mr. Kaufmann's statement was made the subject of some further questions, which seem to reflect upon the bank which I have the honor to represent, and it authorizes me, therefore, to write you in order that your committee may, if the facts be pertinent to any inquiry now pending before you, know the facts fully.

This bank is located in the wholesale district of New York, where the depositors make their deposits chiefly in checks. During the currency panic, which culminated in the action of the New York clearing house of October 26, 1907, in authorizing the

issue of loan certificates, exceptional demands were made upon it for currency and gold. Such demands were greatly in excess of any currency or gold that had been deposited with it, and as the bank was unable to receive its credit balances from the clearing house in either currency or gold, it found it necessary, to meet the reasonable demands of its depositors and customers, to import gold and to increase its circulation, both measures of relief being at a great cost to the bank, as hereinafter stated. The condition was abnormal and required unusual precautions to protect the bank's reserve in the interest of all depositors.

This bank therefore requested its depositors to pay by check wherever possible, and its request in this respect was so reasonable that its depositors, including Mr. Kaufmann, who fully recognized the exceptional nature of the circumstances, fully acquiesced in the propriety of this and other measures to protect the bank's reserves. To further meet the reasonable demands for currency this bank increased its circulation, and to do so was obliged to purchase United States bonds at abnormal prices. It further bought gold amounting to \$4,376,747.01, for which the bank paid a premium of \$52,761.60. Of this cost it received but a small part in return from the customers for whose benefit it had been imported. In a few instances (including Mr. Kaufmann's case), where the demand was of an unusual character, such as the payment of customs duties at other ports than that of New York, the bank did charge its customers the premium, but the aggregate of these premiums was only \$5,352.09, and thus its importation of gold, which was for the benefit of the bank's depositors and customers, cost this bank, after deducting the premiums which it received, the sum of \$47,409.51. It will thus be seen that the bank's importation of gold was not a profit to the bank. The bank imported the gold at great expense, as a matter of business prudence and public spirit and as a contribution on its part to save an exceptionally dangerous general situation. If the bank had made any profit out of its importations of gold, at the expense of its customers, it might be open to criticism. But, as stated, these importations of gold were at a net cost to the bank of over \$47,000.

Referring to the incident referred to by Mr. Kaufmann, no demand was made upon the bank by the firm of which he is a member, either for gold or currency, in the instances to which he referred. Mr. Kaufmann's firm needed gold to pay customs duties in other ports than those of New York, and voluntarily offered to buy the gold if the bank would supply their requirements in New York. At its request and for its accommodation, the bank purchased gold and charged it the same, or a less premium than it had paid for its importation.

In this connection I may add that the bank in no case charged a customer a greater premium than it had to pay, and in many cases it charged a less premium, and, as previously stated, the premiums received were about one-tenth of the total cost to this bank of the importations of gold.

If your committee prefers that the bank should send a representative to make a formal statement of these facts, it will cheerfully do so, but I trust that this letter of explanation will answer the purposes of your committee and convince its members that the Citizens' Central National Bank is not justly subject to any criticism by reason of the incident to which Mr. Kaufmann referred.

Nothing in this letter, however, must be construed as a reflection upon Mr. Kaufmann.

I have the honor to remain, very respectfully,

JAMES M. BECK,
Counsel for Citizens' Central National Bank.

LIQUOR TAX RECEIPTS

HEARINGS

BEFORE THE COMMITTEE ON WAYS AND MEANS
OF THE HOUSE OF REPRESENTATIVES

60TH CONGRESS, 1ST SESSION

ON

H. R. 13859

APRIL 9, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

COMMITTEE ON WAYS AND MEANS.

HOUSE OF REPRESENTATIVES.

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D. L. D. GRANGER.
JAMES M. GRIGGS.
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WILLIAM K. PAYNE, *Clerk.*

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LIQUOR TAX RECEIPTS.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Thursday, April 9, 1908.

The committee met at 3 o'clock p. m., Hon. E. J. Hill, chairman pro tempore, in the chair.

STATEMENT OF MR. MATTHEW E. O'BRIEN, REPRESENTING THE PROHIBITION NATIONAL COMMITTEE.

The CHAIRMAN pro tem. Will you state whom you represent, and your residence?

Mr. O'BRIEN. I represent the Prohibition national committee. My residence is Bridgeport, Conn. My Washington residence is 212 B street SE.

This bill (H. R. 13859)^a is one of some twenty-odd bills introduced in Senate and House to remedy a well-known evil, and there is nothing in this bill that any law-abiding citizen could object to; whatever may be his opinion on the advisability of prohibition, he can not object to this bill unless he is in favor of permitting lawlessness. The act provides that any person, firm, or corporation regularly licensed by the authorities of the place in which he or it intends to do business, shall be granted a liquor tax receipt by the internal revenue department, and that no one else shall be. The courts have repeatedly stated that the sale of intoxicating drink was a business that was fraught with great danger to the community, and for that reason the Supreme Court of the United States says that no person has an inherent right to engage in the manufacture or sale of intoxicating drink for beverage purposes, and in every State of the Union where the business is recognized as a legitimate business and where the States issue licenses and persons carry on the business, there is some qualification required of the man who seeks that license; but the Federal Government of the United States will issue a liquor tax receipt to any one who applies for it and pays the \$25. It matters not whether the person applying for it be immoral or be a murderer, the liquor tax receipt is issued by our internal revenue department to-day.

In the United States there were issued last year 236,448 liquor tax receipts for persons to engage in the retail sale of spirituous liquors, 18,266 for persons to engage in the retail sale of malt liquors. At least one-third of these, or 84,571 persons in the United States, are holding a liquor tax receipt from the Federal Government to-day permitting them, so far as the Federal Government is concerned, to violate State law. I realize that the tax receipt simply protects the person holding it from prosecution under the Federal law for failure to pay the tax. What we propose by this legislation is to

^a For this bill see p. 223.

have the State and the Federal authority work in harmony. We want the Federal Congress to use its taxing powers in support of State law, and not that State law may be trampled under foot. When it is recognized by the Supreme Court of the United States, and by every authority, that this business is a dangerous business, and that even in license States persons who wish to engage in it must be persons who have fulfilled some qualification by which they are deemed suitable persons to engage in the business, then the Federal Government should make its taxing powers conform with the law of the State. If this bill becomes a law, it will leave the penalty provided for the failure to pay the tax intact. It leaves the man who engages in the liquor business in defiance of State law, also answerable in the Federal courts, and at the same time it interferes with no man who has authority from the State to engage in business.

Of all the laws that have been suggested, all of the laws that have been introduced, I believe this is the one bill that meets the constitutional objection that the taxes must be laid uniformly throughout the United States. Some of the bills provide for protection of local option and prohibition territory, and provide that no tax receipt shall be issued in that territory. I admit that such a law would be wholly unconstitutional, because section 8 of the Constitution requires that all taxes shall be collected uniformly throughout the United States. You will notice that by this bill we make no attempt to protect any territory or exempt any territory from the operation of the taxing laws of the United States. Under this act every inch of territory in the United States is treated alike, and every person in the United States is treated alike. You are simply requiring that a man who is to engage in a business that is fraught with great danger to the community shall have certain qualifications before he can receive a tax receipt from the Federal Government, and those qualifications we have made simply the holding of a license from the State, county, or municipality in which he does business. In other words, we allow each State to decide what qualifications a person shall have who wishes to engage in the selling of intoxicants. When he has satisfied the State and has procured a license from the State, he then can procure a Federal tax receipt from the Internal Revenue Department, and not before. The only authority that Congress has for levying this tax is conferred by section 8 of Article I of the Constitution, and I want this section carefully considered when you consider this bill. This section reads:

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

When Congress wishes to exercise its taxing power, it must do so in conformity with section 8 of the Constitution, and all taxes must be laid for the purpose of paying debts, providing for the common defense, and providing for the general welfare, and it must consider the other clauses of the Constitution as well, as to the general welfare of the United States, and the taxes must be laid uniformly. I do not think I need to argue that it is contrary to the general welfare of the United States that the Federal laws should assist a violator of State law or should, so far as the Federal Government is concerned, exempt him from prosecution by the issuing of a tax receipt. Sup-

pose our States under their police powers should deem it wise, or should deem it a money-getting proposition for them to issue—we will call it a smuggler's receipt—to persons who might smuggle goods into this country from foreign ports, defying the customs laws of the United States, and then should say to the officers of the State: "You shall not testify against any man who has paid for a smuggler's receipt in any United States court." It would be an attitude of hostility on the part of our coast States against the Federal Government. Is it any more reasonable or right for the Federal Government, under the guise of exercising its taxing powers, to levy a tax on a business that is prohibited in the State or a business that is under State supervision?

I want to call your attention to the fact that this bill protects the license State as well as the prohibition or local option or dispensary State. The purpose of this bill is simply to have each part of our dual form of government work together, so that the State laws will be respected by the Federal Government, and that the Federal Government will not use its taxing powers to nullify State laws, and that it will assist, so far as it is possible, in the enforcement of this law. I want to call your attention to the fact that this revenue measure was laid as a war-revenue measure, and that three times the Congress of the United States has levied a tax of this kind—in 1794, in 1813, and the present one—and under each of the previous acts Congress specifically provided, both in 1794 and the act of August 2, 1813, that no tax should be raised in violation of the police powers of the State. This is the language of the previous act:

Provided always, That no license shall be granted to any person to sell wines or foreign-distilled spirits who is prohibited to sell the same by the laws of the State.

In those days that was called a license.

Mr. GRANGER. What are you quoting from now?

Mr. O'BRIEN. From the act of August 2, 1813, the revenue act by which revenue was to be raised under the power of taxing, and it was applied to various liquors. That same provision was provided in the act of 1794, when this country needed money more than it needs it to-day, and in both those acts the right of the State to control its internal affairs was recognized, and the justice of not using the taxing powers of the United States to thwart the powers of the State to regulate this business was recognized, and in each one of those acts it was specifically provided that no license should be granted to sell wines or foreign distilled spirituous liquors to any person who was prohibited to sell the same by the laws of the State. And that is all that this act provides, that Congress shall, exercising its taxing powers, collect taxes only from those persons who are complying with the law of the State, and not from the lawless element, not from the houses of assignation, not from the brothels and the dives. If the United States Government is forced, in order to maintain this Government, to continue the present system, it must admit that it is necessary for it to collect revenue from lawlessness, that it is necessary for it to issue a liquor-tax receipt to every house of prostitution in the land. Right here in the city of Washington there are, in Hooker's Division, 81 houses of prostitution in which you will to-day find a liquor-tax receipt issued by the Internal-Revenue Department of the United States, exempting those persons from prosecution for the sale of intoxicating drink, so far as Uncle Sam is concerned; and

I have here the names and addresses of every one of those liquor tax receipt holders, which I will file with the committee; and I will ask this committee if they wish to collect revenue from that kind of business.

I realize as well as anyone that the argument will be made that this is purely a tax; but I want to call your attention to the fact that it is a tax for what purpose? A tax for the purpose of engaging in the retail sale of intoxicating drink. The Supreme Court of the United States says that it is not a tax on property, and that it is a tax for engaging in the business. Now, I do not know whether it makes very much difference whether you call it a license or whether you call it a tax, so long as it is laid for the purpose of allowing the persons to engage in the business of the selling of intoxicating drink. The Supreme Court of the United States, in the case of *South Carolina v. United States* (199 U. S., 438), says:

The internal-revenue tax on the sale of liquor is not a tax on property or profits of its business, but a charge on the business irrespective of the property used therein or the profit realized therefrom.

The fact that Congressmen, Members of Congress of the United States, have introduced a large number of bills, and a great number of those Congressmen have in those bills called this liquor-tax permit a license, shows that it is generally regarded as a license by the people of the United States. When Congressmen will call it a license, it is not strange that the general public believe that it is a license, and regard it as such; and to all intents and purposes it is a license. As I said before, there are this number of liquor-tax receipts issued. I want to call your attention to the fact that in the State of Maine, a prohibition State, made so by the vote of the people, the Federal Government has issued to boot-leggers 358 liquor-tax receipts; that in the city of Baltimore, which I have investigated, a city with license, there are 2,340 saloons, and 718 in addition to that holding liquor-tax receipts who are engaged in the sale of liquor unlawfully.

The CHAIRMAN pro tem. Two thousand three hundred who buy licenses?

Mr. O'BRIEN. Two thousand three hundred and forty. Three hundred and forty-four drug stores, and 718 speakeasies in the city of Baltimore. In the District of Columbia there are 521 licenses issued by the excise board for the sale of intoxicating drink, and there are 930, according to the Internal Revenue Department, liquor-tax receipts issued, and deducting the number of drug stores you will find over 200 persons holding a liquor-tax receipt in the city of Washington, or rather in the District of Columbia, to sell intoxicants, who have not got a liquor license. In the city of Philadelphia there are 1,500 in excess of the persons holding the regular license. In the State of Connecticut, the land of steady habits, right in our own home, Mr. Hill, you will find 1,047 persons, in addition to those who hold the regular State license, holding liquor-tax receipts. So that our friends, the enemy, are permitted to conduct this business. Kansas, by the way, has 2,587 liquor-tax receipts issued by the Federal Government to break down the law of Kansas, and our friends, the enemy, call attention to these facts. In New York City there are 4,000 speakeasies, in Philadelphia there are 1,500 speakeasies, in Baltimore there are 718, in Chicago there are some 2,500, and so it is throughout the United States.

More than one-third of the liquor-tax receipts issued in the United States are issued to people who have no local authority whatever to engage in the liquor business. The number throughout the United States, according to my estimate, is 81,571 persons holding tax receipts from the Federal Government to engage in the retail sale of intoxicants who have not got a State, county, municipal, or local license of any kind. So that you are raising revenue from lawlessness, and Congress is using its taxing powers to raise this revenue from what the liquor men themselves say are the worst kind of conditions. There is not a house of prostitution from Maine to California in which you will not find one of these liquor-tax receipts. Our President said in a recent message to Congress: "Righteousness alone exalteth a nation." I have asked him, and I am going to ask this committee, if it is righteous for the Federal Government, exercising its right to levy taxes, to raise revenue from such a source as that, if there is no firmer foundation on which this Government's revenues can be built, and is it proper for you to use that power to assist the violator of the law? This bill does not pretend to interfere in any way with any person who has the right to engage in the sale of intoxicating drink. It does not pretend to wipe out a single saloon. It is not a prohibition bill. It is simply a bill that provides for law enforcement. Every person, firm, or corporation legally authorized to engage in business can continue in business if it becomes a law, and every honest liquor dealer, if there are any such, should be here to-day advocating the passage of this bill. It would be a protection to the liquor dealer himself. But he is not here, because, being a violator of the law himself, he dare not say anything about these other fellows who are violating the law. But in justice to the men who pay a State, county, municipal, or local license fee, they should be protected from the person who pays nothing but the \$25 to the Federal Government for a liquor-tax receipt. The Supreme Court of the United States even called this a license, excise. For years we have been told that this was not a license, that it was a tax and not a license; but the learned gentlemen of the Supreme Court of the United States treat it as a license and say it is an excise license, and it is that and nothing else. I want to read from the latest decision on this subject a few extracts. Chief Justice Marshall, in the case of *McCulloch v. Maryland*, says:

But is this a case of confidence? Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not. Why, then, should we suppose that the people of any one State should be willing to trust those of another with the power to control the operations of a government to which they have confided their most important and most valuable interests? In the Legislature of the Union alone are all represented. The Legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused.

That was given in support of the contention that when the States conferred powers upon Congress they did not confer any power upon Congress that was going to limit their own police powers. In other words, that there was no intention upon the part of the State that Congress should use its taxing power or its power to regulate interstate commerce or anything else in such a manner as to break down State authority. In the case of *The Collector v. Day* (11 Wall., 113),

as quoted in the decision in the case of *South Carolina v. The United States* (199 U. S., 459), the Supreme Court declared:

¶ It would seem to follow, as a reasonable, if not a necessary, consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated, by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And more especially those means and instrumentalities which are the creation of their sovereign and reserved rights, one of which is the establishment of the judicial department and the appointment of officers to administer their laws. Without this power and the exercise of it we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence.

And in the case of the *United States v. The Railroad Company* (17 Wall., 322), quoted in the same case at page 460 (199 U. S.), the court said:

The right of the States to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government.

And notwithstanding this, year after year the Internal Revenue Department has persisted in issuing these liquor-tax receipts.

On page 464 of the same volume, in the dissenting opinion of Mr. Justice White, with whom concurred Mr. Justice Peckham and Mr. Justice McKenna, I find this:

That the State, under its police authority, had the right to absolutely prohibit the sale of liquor, or to subject it to such regulations as it deemed proper, is elementary. So far-reaching is that authority that a State may direct the destruction of liquor held contrary to law, without paying the value thereof, and without thereby violating the constitutional safeguards as to the taking of property. (*Mugler v. Kansas*, 123 U. S., 623.)

And this is the subject we are dealing with; property that can not be protected by the Constitution, this class of goods that the Supreme Court says can be destroyed without any violation of the constitutional provisions; and yet when every State in the Union recognizes it as a hazardous business, fraught with great danger, and an evil that must be prohibited or controlled, the United States Government, through its internal-revenue officers, continues issuing liquor-tax receipts to prostitutes and murderers. In Kansas City the other day a man was arrested, skulking about through a wilderness, a murderer who was wanted in Missouri, and on his person was found a liquor-tax receipt issued by the Federal Government, permitting him to sell intoxicating drink in the State of Kansas in defiance of the State law; a fugitive from justice, carrying a bottle in his bootleg, going around breaking down the law of Kansas! Does Uncle Sam want to raise revenue in that manner?

In the case of *Ambrosini v. United States* (187 U. S., 1) it was held that Congress could not impose a stamp tax upon a bond which the State law required to be given as a prerequisite to the right to sell liquor. The court says:

Is the ruling now made reconcilable with the cases just referred to?

It was decided that you could not require a stamp on a liquor license issued by the State because the State had the authority to issue the license, and therefore you did not have the authority to say

that that stamp should be placed on the license to make it a valid license. Now, when the State says it shall not issue any license, what authority have you to issue a tax receipt? If you could not impose a tax upon it when it was a legalized business, how can you issue this tax receipt when it is denounced and prohibited by the State? The police powers of the State and the powers of the Congress should work in harmony instead of in conflict, and it a very easy matter to have them work in harmony. If this bill becomes a law Congress is taking no attitude on the liquor question. It declares neither in favor of prohibition nor against it. It is taking no attitude whatever on the question of prohibition. It is simply saying, "We will not issue liquor-tax receipts to any person, firm, or corporation unless the person applying for the tax receipt has first secured a State, county, or municipal license to engage in the business." In other words, you are saying, "We will not raise revenue from lawlessness; we will not get our revenue from men who are breaking down State laws, and we will assist the State in prosecuting violators of law." That is the attitude that the Government should take. Our Government was formed for the purpose of making a more perfect union, to secure the establishment of justice, and promote peace and domestic tranquillity, and secure to ourselves and our posterity the blessings of liberty, and under that Constitution the State and the nation must work in harmony.

In our dual form of government there can be no conflict, or should be no conflict, between State authority and Federal authority, and there would be none if an attempt was made to have them coincide, because, as I said before, not a single State of the Union has ever attempted to protect violators of the laws of the United States. Our seacoast States—and it would be a more honorable business—could issue tax receipts or could issue permits to people to engage in smuggling, and could prevent the officers from testifying against men holding smuggling receipts, and could do it with a better grace than the United States can issue tax receipts to men who break down State laws. There is no question but what this act should be passed, and I want the committee to consider the eighth section. I am going to read it again so as to get it in the record:

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

This bill is providing for the general welfare of the United States. It is providing for respect of State law everywhere. It is uniform in every inch of territory in the United States. It provides simply that a man seeking a Federal tax receipt shall procure a local license, and when he has done that then he can pay his tax and be exempted from the operation of the Federal law and the State law as well.

The great argument that is used against prohibitory laws is that prohibition does not prohibit, and when liquor men come in and make that statement in the National Capitol I wonder that Congressmen will listen to them. I do not believe that they realize the attitude of those men. This nation has been able to win independence from Great Britain; it has fought against outside force; it has been victorious against internal insurrection. There has been nothing that threatened the life of the country that it has not been able to overcome; and yet we are told to-day in the United States Capitol that

we now have something that is greater than the Government; that the liquor traffic can defy any law that can be made, and that that liquor traffic is greater than the combined forces of Government, and no matter what laws are made, they will be violated. It is a challenge that ought to be accepted.

I do not wish to take time further at this hearing. I want to wait and see if somebody has the temerity to come before this committee and say that he is opposed to that bill. If somebody does, I want afterwards to reply.

This is a bill that provides for law enforcement. It limits no man who has a right to engage in business to-day. Whatever may be said about prohibition, this bill is one that should receive the support of every honest man. It provides that laws shall be respected, and nothing else; and unless some one has the temerity to come in here and say that the Congress of the United States should keep its protecting hand on violators of State law, and allow men engaged in breaking down the laws of States to have the protection of the Federal revenue department, this bill should become a law. No one is interested in opposing the bill, no one can have any interest in the bill, except those who want to break down the laws of the States, and they only will fight for the present conditions because they know it allows them to continue to make that argument, that prohibition does not prohibit. I realize that the revenue question is going to enter into this, and I realize that the committee has got to confront a condition of a loss of \$2,104,175 in revenue if it passes this bill. I realize that, but I think that we can get our revenues from other sources than from the bootlegger and murderer and prostitute who are engaged in the selling of liquor illegally. I am not going to suggest how that revenue can be made; I am not going to offer any suggestions as to how you can make up the deficiencies in your revenue; but I ask you if you want to continue to get the dirty dollar of the dives, and if the country is going to confess to the world that it has sunk to a degree where in order to maintain itself it has got to continue to be in partnership with persons who are in open violation of State law! Whatever may be said about taking profit from the liquor business that is licensed and legitimate in the State, I do not believe that this committee or this Congress wants to go on record as saying that we can not get revenue in any other way except from the lawlessness and the illegal sale of liquor in all kinds of territory. This is not a bill that protects prohibition territory alone; it protects the license State, as well, and the licensed dealer as well. It applies to every inch of territory.

I will now conclude, asking this committee if they can not supply the revenues of the United States in any other way than by taking them from that kind of lawlessness; and if we are in such a condition that we must admit that we have got to take them from that kind of lawlessness, we can not stand up to the motto of the President, "Righteousness alone exalteth a nation." If the revenue question is not considered by this committee, there is no other question for them to consider. Casting the revenue question aside, there is no other question for you to consider, because as law-abiding citizens you can not say that we are going to continue to protect violators of the law. I thank you.

STATEMENT OF MRS. MARGARET DYE ELLIS, NATIONAL SUPER-INTENDENT OF LEGISLATION FOR THE WOMAN'S CHRISTIAN TEMPERANCE UNION.

Mrs. ELLIS. My Washington address is 522 Sixth street NW. I merely want to place on record, Mr. Chairman, the fact that the organization which I represent, of over 300,000 women in the United States, is favorable to and desirous of the passage of a bill of this nature. The nullification of law in prohibition territory under the guise of internal revenue has worked disaster in many places, and is doing so, and I am in receipt of letters constantly from over the country asking if it is a fact, for many people can not believe that this is a Government license and not a tax, as we have been instructed; but it is a license, for these men have the power to sell where the law is opposed to it, and we think that in justice to our people such a law should be opposed.

This question of revenue has been spoken of. We are the richest nation on earth. We have greater crops than any other country under the stars. Yet it seems, if this was a war measure and one that was brought forward in a great emergency at each time when this law became operative, that it is a just measure to pass such a law and protect these men that have paid for their licenses and have their right under the law of the State to sell. But for the Government to step in and to push aside the law of prohibition territory and say to a man, "If you will give me \$25, you may go ahead and sell," is an injustice which appeals to women, and I am here, not as a lawyer but as a woman, and I am here as one who represents those whose interests have been very much injured and harmed and interfered with by the fact that the Government does issue a tax or a license permitting the sale in this territory, and we want to place ourselves on record. Thank you.

Whereupon the committee adjourned.

BILL UNDER CONSIDERATION.

[H. R. 13859, by Mr. Hill, of Connecticut (by request).]

A Bill To prohibit the issuing of a tax receipt for the sale of liquor to any person, firm, or corporation selling or proposing to sell liquor in violation of State, county, or municipal law, whether in license, dispensary, local-option, or prohibition territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of this Act it shall be unlawful for any official or government employee in the Internal-Revenue Service of the United States, or in any other department of the Government, to issue a receipt for the payment of the special revenue tax of the Government imposed and levied by law upon the sale or other disposition of any spirituous, vinous, or malt liquors, or other intoxicating beverages in any State, county, or municipality of the United States, to any person, firm, or corporation, until the said person, firm, or corporation shall have first procured a valid license to sell such liquors or beverages from the State, county, or municipality in which said person, firm, or corporation desires or intends to sell the same, and for the particular place for which said tax receipt is sought, and covering a like period of time, and shall have produced the same to the said official or Government employee in the Internal-Revenue Service of the United States for his inspection. And it shall be the duty of such Government employee to make a brief record of such State, county, or municipal license so exhibited to him by the applicant for said tax receipt.

SEC. 2. That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed.

PHILIPPINE ISLAND TARIFF

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

60TH CONGRESS : : 1ST SESSION

ON

H. R. 21449

May 5, 1908

WASHINGTON
GOVERNMENT PRINTING OFFICE

1908

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES.

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EBENEZER J. HILL.
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OSCAR W. UNDERWOOD.
D. L. D. GRANGER.
JAMES M. GRIGGS.
EDWARD W. POUL.
CHOICE B. RANDELL.

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PHILIPPINE ISLAND TARIFF.

(Amendments to Tariff Revision Law of 1905.)

THE COMMITTEE ON WAYS AND MEANS,
U. S. HOUSE OF REPRESENTATIVES,
Tuesday, May 5, 1908.

The committee this day met at 10 o'clock a. m., Hon. Sereno E. Payne in the chair.

Members present: Messrs. Dalzell, Hill, Boutell, Calderhead, Fordney, Gaines, Bonyng, Clark, Cockran, Underwood, Granger, Randell, and the chairman.

There was also present Hon. Benito Legarda, Resident Commissioner Philippine Islands, Gen. C. R. Edwards, and Maj. Frank McIntyre.

(For bill under consideration, see page 233.)

STATEMENT OF GEN. CLARENCE R. EDWARDS, CHIEF BUREAU OF INSULAR AFFAIRS, WAR DEPARTMENT, ACCOMPANIED BY MAJ. FRANK MCINTYRE, ASSISTANT.

Mr. CLARK. What is the purpose of this bill? Is it in reference to the tariff in the Philippine Islands?

General EDWARDS. Yes, sir; it modifies the tariff.

We have prepared in the Insular Bureau a parallel-column memorandum of the old and the new tariff. It was especially prepared by Major McIntyre, and in order to save time I will ask him to explain each one of the items.

The CHAIRMAN. Please take up paragraph 29.

Major MCINTYRE. The only change in that paragraph is the insertion of subparagraph "c," silvered copper foil, N. W., kilo, 50 cents. That has the effect of reducing the tariff on silvered copper foil, which now falls under "b" above. It was \$2 per kilo, and it is reduced to 50 cents.

Mr. HILL. Where is the corresponding item in this pamphlet?

Major MCINTYRE. Paragraph 29 is on page 13, and the only change is to insert a subparagraph "c," silvered copper foil, N. W., kilo, 50 cents. That at present falls under "b," and the tariff is as shown, \$2. The remainder of the paragraph is unchanged. That is suggested on the recommendation of the Commission. There is a button factory in the Philippine Islands, and they use this silvered foil in the packing of mother-of-pearl buttons, but the tariff on it is now so great that they can not use it for that purpose.

The CHAIRMAN. It reduces the tariff from \$2 to 50 cents?

Major MCINTYRE. Yes, sir. There is no other change in the paragraph.

Mr. HILL. It comes in now under paragraph "b?"

Major McINTYRE. Yes, sir; and it makes a subparagraph "c," covering that specific item.

Mr. DALZELL. The proviso remains the same?

Major McINTYRE. Yes, sir. As you will notice, there is an ad valorem limit below which this can not fall in any case.

The CHAIRMAN. Now, pass to paragraph 245.

Major McINTYRE. Paragraph 245 is changed from the old paragraph in this respect: Agricultural machinery and apparatus which now appear in that paragraph are placed on the free list, and by a subsequent change machinery for making or repairing roads, and steam plows, now appearing in that paragraph, are taken out and "machinery and apparatus for mining and the reduction and smelting of ores" is taken from paragraph 257 and placed in paragraph 245. The net result of that is to put "agricultural machinery, apparatus, and implements, machinery and apparatus for making or repairing roads, steam and other motor plows" on the free list, and changing machinery and apparatus for mining and the reduction and smelting of ores from the paragraph which provides 20 and 10 per cent ad valorem to the paragraph which provides 5 per cent ad valorem.

Mr. CLARK. How much does it reduce it?

Major McINTYRE. It reduces agricultural machinery and apparatus from 5 per cent to nothing and reduces machinery and apparatus for mining and the reduction and smelting of ores from 20 and 10 per cent, according to character, down to 5 per cent. Practically all of this machinery is imported from the United States.

General EDWARDS. At least 90 per cent; they control the market.

The CHAIRMAN. Now please take up paragraph 308.

Major McINTYRE. The only change in paragraph 308 is the insertion of a proviso: "*Provided*, That each and every gauge or wine liter of measurement shall be counted as at least one proof liter." That is to make the rule uniform with the internal-revenue laws of the United States and also with the customs tariff act of the United States. It has the effect of slightly increasing the tariff.

The CHAIRMAN. It makes it correspond with the internal-revenue laws of the United States?

Major McINTYRE. Yes, sir.

Mr. HILL. It simply adds the proviso?

Major McINTYRE. Yes, sir; that is all.

The CHAIRMAN. Do they manufacture much whisky, rum, and gin?

Major McINTYRE. No, sir; it is not for the purpose of protecting any industry.

The CHAIRMAN. You spoke of making it correspond with the internal-revenue laws of the United States?

Major McINTYRE. Yes, sir; the internal-revenue laws of the United States and our customs act.

The CHAIRMAN. Please take up paragraph 345, on page 3.

Major McINTYRE. The change in that paragraph is in the way of an increase. The present tariff under "a" is 20 cents and that is changed to 30 cents. That is the only change.

Mr. CLARK. I thought you said that you were putting the tariff down?

Major McINTYRE. On the other part of the buttons. The object of this is to protect the button factory.

The CHAIRMAN. You have quite a button factory in Manila?

Major McINTYRE. Yes, sir. They have great mother-of-pearl fisheries and they expect to do more in the way of manufacturing buttons.

The other change is in the proviso at the end of "c." That is a change from \$1 to \$1.30. That is \$1 in the present tariff, and the proviso proposes to read: "*Provided*, That none of the articles classified under clause 'c' of this paragraph shall pay a less rate of duty than 50 per centum ad valorem."

Mr. CLARK. What is the old law?

Major McINTYRE. That proviso does not appear. The old law provides under "a" 20 cents, and for paragraph "c" \$1. The 20 cents under "a" is changed to 30 cents, and the \$1 under "c" is changed to \$1.30, and there is an added proviso, "That none of the articles classified under clause 'c' of this paragraph shall pay a less rate of duty than 50 per centum ad valorem."

Mr. CLARK. Why do you raise it?

Major McINTYRE. To protect the button factory in Manila.

General EDWARDS. They find that they can not compete with European importations, particularly from Germany.

Mr. HILL. The tendency of this will be to have the pearl shells which are now brought there used at Manila?

Major McINTYRE. Yes, sir; that is the intention.

The CHAIRMAN. The object is to encourage an infant industry in the Philippine Islands?

Major McINTYRE. Yes, sir.

Mr. GRANGER. Who asks for it?

Major McINTYRE. It is recommended by the Philippine Commission in their printed report. The specific recommendations will be found on pages 22 to 38 of the report of the Philippine Commission for 1907. They set forth the reason for each one of these changes, which have been drawn exactly as recommended by the Philippine Commission.

Mr. CLARK. What is the change in paragraph "c?"

Major McINTYRE. The mother-of-pearl?

Mr. CLARK. Yes, sir.

Major McINTYRE. Mother-of-pearl is changed from \$1 to \$1.30.

Mr. GRANGER. Who runs this pearl factory?

Mr. LEGARDA. Doctor Valdes is the chairman of the board of directors and some other Filipinos who are interested in it.

Mr. GRANGER. Are they Filipinos?

Mr. LEGARDA. Yes, sir.

Mr. GRANGER. Or Americans?

Mr. LEGARDA. No; they are Filipinos.

Mr. GRANGER. There is no American interested in it at all?

Mr. LEGARDA. There is one, at least I think, a brother-in-law of Mr. McCulloch, who has some shares in it.

Mr. DALZELL. It is a corporation?

Mr. LEGARDA. Yes, sir.

Mr. CLARK. This says in subparagraph "c," mother-of-pearl, etc., \$1.30, and then in this proviso it says "that none of the articles classified under clause 'c' of this paragraph shall pay a less rate of duty than 50 per cent ad valorem?"

Major McINTYRE. That is the specific duty by weight, \$1.30, and the proviso provides that in no case shall this be less than 50 per cent ad valorem. It is fixed by weight, and the proviso is simply to put the ad valorem limit.

Mr. CLARK. How long have they been running this factory over there?

Mr. LEGARDA. Four years.

Mr. CLARK. They have been getting along pretty well so far?

Mr. LEGARDA. No, sir.

Major McINTYRE. The Philippine Commission claims, after a careful investigation of the books, that the manufacture of pearl buttons results in a loss of 16 per cent on the cost of production.

Mr. GRANGER. How many people do they employ?

Mr. LEGARDA. About 100. Part of the work is done in the Bilibid Prison at present.

Mr. CLARK. The net result of this performance is that it raises the tariff 30 per cent.

The CHAIRMAN. On page 36 of this report they say:

After careful examination of the books and operations of this button factory we are of the opinion that the present rate of customs duty is not sufficient to give a fair profit to the manufacturer here upon certain lines of mother-of-pearl buttons, and that if said factory is not afforded certain additional protection against the competition of imported buttons it will be compelled to close its doors.

General EDWARDS. We have figured out here what will be the net loss of revenue in each case if that is of interest to the committee.

The CHAIRMAN. We will go through the paragraphs first. Please take up paragraph 397.

Major McINTYRE. Paragraph 397 comes under the heading, in the first place, "Articles free of duty subject to the formalities prescribed in each case by the customs authorities," and at present it reads

Parts of machinery, pieces of metal, and wood imported for the repair of foreign vessels which have entered ports of the Philippine Islands through stress of weather.

That is changed on the recommendation of the Commission to read:

All materials for exclusive use in the construction and repair, in the Philippine Islands, of vessels of all kinds.

Mr. CLARK. Where is that?

Major McINTYRE. That is paragraph 397. I read first the existing law. That is changed to read:

All materials for exclusive use in the construction and repair, in the Philippine Islands, of vessels of all kinds.

Mr. CLARK. Where are you reading now?

Major McINTYRE. The proposed bill, at the bottom of page 3. It simply enlarges it to include all materials used exclusively in repairing and constructing ships in the Philippine Islands; it puts them on the free list.

The CHAIRMAN. It enlarges the free list to that extent?

Major McINTYRE. Yes, sir; that is supplementary to the change in paragraph 245, which places "agricultural machinery, apparatus and implements, machinery and apparatus for making or repairing roads, steam and other motor plows" on the free list.

The CHAIRMAN. I noticed in the former paragraph that you did not include rice and sugar machinery, etc. Does this paragraph in the free list conflict with that?

Major McINTYRE. No, sir; that still remains provided for.

The CHAIRMAN. You do not call it agricultural machinery?

Major McINTYRE. They have always made a distinction in the tariff for some reason.

Mr. CLARK. What does that change amount to?

Major McINTYRE. The articles put on the free list are taken from paragraph 245 of the present tariff act, 5 per cent ad valorem, and put under the new paragraph 384½ on the free list.

Mr. DALZELL. You take section 257 and divide it up into paragraph 245 and paragraph 384½?

Major McINTYRE. That is right.

General EDWARDS. You can see what the Commission says in their report.

I will read section 22:

That the entry of all importations at the ports of the Philippine Islands made subsequent to a period of sixty days from the date this revised tariff goes into force and effect, of goods, wares, and merchandise from countries other than the United States, when the value of such importation exceeds \$100, shall be accompanied by a consular invoice similar to that required for goods imported into the United States from foreign countries and executed as required for importations into the United States; and when brought into the Philippine Islands from the United States, such importations shall be accompanied by an invoice similar in form to the consular invoices required for importations into the United States, but in lieu of execution by a consul of the United States, such invoice shall be sworn to before a United States commissioner, collector of customs, or deputy collector of customs.

Now, the Commission finds it burdensome, and I will ask Major McIntyre to read their language.

Major McINTYRE (reads):

Section 22 provides that all importations of merchandise into the Philippine Islands from countries other than the United States, when the value of such importations exceeds \$100, shall be accompanied by a consular invoice similar to that required for importations into the United States, and that when brought into the Philippine Islands from the United States such importations shall be accompanied by an invoice similar in form to the consular invoice, but in lieu of execution by a consul of the United States such invoices shall be sworn to before a United States commissioner, collector of customs, or deputy collector of customs.

After a period of about two years, during which the workings of the consular invoice system have been carefully noted, the fact is evident that the introduction of consular invoices for importations into the Philippine Islands has not been of any advantage to the Philippine customs service, nor are such invoices as useful in the dispatch of imported merchandise as are the usual commercial invoices which were formerly required by law; this for the reason that United States consuls throughout the world apparently have no information whatever in regard to the Philippine customs laws nor as to the information which invoices must contain in order to permit importers to make a proper entry covering such importations, or to furnish the information which customs officers absolutely require for the proper classification of the same.

The average value of an importation covered by consular invoice is estimated by this office to be approximately \$250 United States currency, and it is fair to estimate that during the past twelve months there were 30,000 of such invoices presented covering merchandise from countries other than the United States. This number of entries would represent an additional cost to importers of \$75,000 United States currency, which, of course, must be an additional charge to the consumers who purchase the imported goods.

The Philippine tariff-revision law of 1905 is essentially a tariff of specific rates. Of the 366 paragraphs contained in the tariff, only 45 have a straight ad valorem rate and only 62 an ad valorem provision, making but 107 paragraphs of the tariff which are in any way affected by the value of the imported merchandise. This leaves 259

paragraphs which are not affected by ad valorem rates, and the merchandise dutiable under these 259 paragraphs might as well be passed by the customs officers without any invoice whatsoever in so far as the revenue of the islands is concerned

What is particularly required under our tariff is an invoice which properly describes the merchandise as to kind and quantity, and which shows correctly the gross and net weight of the same. The commercial invoices which were received prior to the passage of the tariff-revision law of 1905 contained in nearly every instance the needful information, which has never been required by United States consuls in the invoices consulated by them.

Mr. UNDERWOOD. Those commercial invoices are sworn to; is not that the custom?

Major McINTYRE. They can be; they are sworn to.

Mr. UNDERWOOD. Without further legislation, will there be any requirement to force them to swear to the invoices?

Major McINTYRE. I think not.

Mr. UNDERWOOD. How are you going to protect the revenues if you do not make the importer swear as to what he brings in?

Major McINTYRE. They can make them swear.

Mr. HILL. What good does it do to make them swear? They are all verified by the appraisers there.

The CHAIRMAN. This is almost exclusively specific.

Mr. HILL. Supposing there was no invoice at all?

Mr. UNDERWOOD. A man is guilty of perjury if he swears to a false affidavit.

Mr. HILL. Their customs authorities do just as we do.

Mr. UNDERWOOD. You would not be in favor of repealing section 22 of the Dingley Act?

Mr. HILL. I believe our consular invoices are absolutely useless. The consuls do not know anything about it, except in a general way. They have not the expert information as to the cost of silks and particular styles of dress goods and they can not get it even in the United States.

Mr. CLARK. All of these regulations in connection with the tariff in every country under the sun are based on the supposition that everybody is a possible smuggler. That accounts for all the regulations in our tariff here, and why is it not fair to presume that every fellow going to the Philippines is a smuggler?

Mr. HILL. The smuggling is effected at the port of arrival.

Mr. CLARK. At last, but there may be some way of punishing the fellow for smuggling.

Mr. HILL. This section does not apply in that direction at all.

Mr. CLARK. Why does it not?

Mr. DALZELL. Section 22 being repealed does not relate to that at all.

Mr. UNDERWOOD. It makes the importer swear to the invoice, and if he swears to a falsehood he is subject to pain and penalty.

Mr. CLARK. The last clause in section 22 reads. 

But in lieu of execution by a consul of the United States, such invoice shall be sworn to before a United States commissioner, collector of customs, or deputy collector of customs.

Mr. DALZELL. That is coming from the United States? 

Mr. CLARK. Yes, sir; that is coming from the United States. It says at the beginning of section 22:  

That the entry of all importations at the ports of the Philippine Islands made subsequent to a period sixty days from the date this revised tariff goes into force and effect, of goods, wares, and merchandise from countries other than the United States,

when the value of such importation exceeds \$100, shall be accompanied by a consular invoice similar to that required for goods imported into the United States from foreign countries and executed as required for importations into the United States.

Do they not have to swear to those papers coming into the United States?

Mr. DALZELL. Yes, sir.

Mr. CLARK. And if they have to swear to them coming into the United States, why do they want to do away with it for the Philippine Islands?

Mr. HILL. The purpose is to save the cost of consular certification, etc.

Mr. DALZELL. You will find the whole thing on page 35 of the report of the Commission.

Major McINTYRE. This is the form of the blank [exhibiting]. They state the value of the article and the amount. When it goes to the Philippine Islands in about nine cases out of ten the value has nothing to do with the tariff; the tariff is specific.

Mr. CLARK. Why can not our consuls learn a few things?

Major McINTYRE. They say it does not apply to the form of tariff.

Mr. BONYNGE. It would apply in an ad valorem case?

Major McINTYRE. Yes, sir; the people of the United States have more trouble with this than the Germans or anybody abroad because in certain cases there is no officer in the community. A man wishes to ship something to the Philippine Islands, cotton or cotton goods, from some place in North or South Carolina, and he may not have at his place any one of these officers and it requires him to go to some place where there is a United States commissioner.

Mr. CLARK. Suppose it was changed so that he could swear to the invoice before a notary public?

Major McINTYRE. They claim that it is simply a burden to make him swear. Our people complain of this more because, in the first place, the foreigner ships from a port and he has the consul there.

The CHAIRMAN. This provision was made in the customs administrative act as to goods coming into the United States to protect against the undervaluation of goods where the duties were payable ad valorem in order to get another line out on the value of the goods. That is the only reason it is in our customs administrative act and this was copied into the Philippine bill from that act. The question is whether there is any necessity where there are so few duties ad valorem in the whole act.

Mr. CLARK. If it is necessary to have it in the Dingley Act for the purpose of protecting our revenues, why is it not as important in proportion to have it in the Philippine act?

The CHAIRMAN. The Dingley Act had many ad valorem duties, there is a large amount collected, but where the duties are specific dependent on the value of the goods, as in the Philippine act, there is very little revenue collected on ad valorem duties.

Mr. BONYNGE. There are 107 paragraphs in the Philippine act affected in some way. This is the statement of the Commission

Of the 366 paragraphs contained in the tariff, only 45 have a straight ad valorem rate and only 62 an ad valorem provision, making but 107 paragraphs of the tariff which are in any way affected by the value of the imported merchandise.

The CHAIRMAN. That does not bear out the statement made a little while ago.

General EDWARDS. If you will notice the direct provision——

The CHAIRMAN. But the other is just a covering clause.

General EDWARDS. That is what this section is to guard against as well as the straight ad valorem.

Mr. HILL. If this is repealed there will be no sworn invoice at all?

General EDWARDS. Except what they would provide under the customs administrative law. They would provide for exactly what they found they needed.

Mr. UNDERWOOD. But their regulations could not carry any penalty. You have to have a law to provide the penalty.

Thereupon the committee proceeded to the consideration of executive business; after which it adjourned.

APPENDIX.

BILL UNDER CONSIDERATION.

(H. R. 21449, by Mr. Payne, April 30, 1908.)

A BILL To amend an act entitled "An act to revise and amend the tariff laws of the Philippine Islands, and for other purposes," approved March third, nineteen hundred and five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs twenty-nine, two hundred and forty-five, three hundred and eight, three hundred and forty-five, and three hundred and ninety-seven of the act entitled "An act to revise and amend the tariff laws of the Philippine Islands, and for other purposes," approved March third, nineteen hundred and five, be, and the same are hereby, amended to read as follows:

"PAR. 29. Gold and silver plated wares:

"(a) Gold and silver plated jewelry, N. W., kilo, two dollars and forty cents.

"(b) Gold and silver plated wares other than jewelry, N. W., kilo, two dollars.

"(c) Silvered copper foil, N. W., kilo, fifty cents.

"*Provided*, That none of the articles classified under paragraphs twenty-seven, twenty-eight, and twenty-nine shall pay a less rate of duty than twenty-five per centum ad valorem: *And provided further*, That all articles classified for duty under paragraphs twenty-seven, twenty-eight, and twenty-nine shall pay the prescribed rates on the net weight of the articles themselves, and that the immediate packing in which they are contained shall be assessed for duty under the paragraph covering the articles of which it is manufactured."

"PAR. 245. Machinery and apparatus for mining and the reduction and smelting of ores, for pile driving, dredging, and hoisting, for refrigerating and ice making, sawmill machinery, machinery and apparatus for extracting vegetable oils and for converting the same into other products, for making sugar, for preparing rice, hemp, and other vegetable products of the islands for the markets, and detached parts therefor, also traction and portable engines and their boilers adapted to and imported for and with rice-thrashing machines, five per centum ad valorem."

¹ NOTE.—The expression "preparing vegetable products for the markets" shall be taken to mean putting said products in their first marketable condition.

"PAR. 308. (a) Whisky, rum, gin, and brandy, per proof liter, thirty-five cents: *Provided*, That each and every gauge of wine liter of measurement shall be counted as at least one proof liter.

"(b) Cocktails, blackberry, and ginger brandy, per gauge liter, thirty-five cents.

“(c) Liqueurs, cordials, and all compound spirits, not specially mentioned, per gauge liter, sixty-five cents.

“*Provided, however,* That if the proof in the liquors classified under (b) and (c) of this paragraph should be above one hundred and five degrees the same shall pay a surtax of twenty-five cents per liter.”

“PAR. 345. Buttons:

“(a) Bone, porcelain, composition, wood, steel, iron, and similar materials, N. W., kilo, thirty cents.

“(b) Rubber, copper and its alloys, N. W., kilo, fifty cents.

“(c) Mother-of-pearl and others not specially provided for, except of gold or silver, or gold or silver plated, N. W., kilo, one dollar and thirty cents.

“*Provided,* That none of the articles classified under clause (c) of this paragraph shall pay a less rate of duty than fifty per cent ad valorem.”

“PAR. 397. All materials for exclusive use in the construction and repair, in the Philippine Islands, of vessels of all kinds.”

SEC. 2. That under the heading “Articles free of duty” there shall be added a paragraph as follows:

“PAR. 384½. Agricultural machinery, apparatus, and implements, machinery and apparatus for making or repairing roads, steam and other motor plows.”

SEC. 3. That section twenty-two of the said act is hereby repealed.

† SEC. 4. That this act shall take effect sixty days after its passage.

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